

0001  
2 CIRCUIT, IN AND FOR DADE COUNTY,  
FLORIDA  
3 GENERAL JURISDICTION DIVISION  
4  
-----X  
5 HOWARD ENGLE,  
6 Plaintiff.  
7 -against-  
8 PHILIP MORRIS COMPANIES, INC., et  
al.  
9 Defendants.  
10  
-----X  
11 August 4,  
1997  
12 9:45  
o'clock A.M.  
13 DEPOSITION of DR. JAMES F.  
GLENN, a  
14 Witness herein, taken by  
Plaintiff, pursuant to  
15 Notice, at the offices of  
Debevoise & Plimpton,  
16 875 Third Avenue, New York, New  
York, before  
17 Phyllis Sax, a Shorthand  
Reporter and Notary  
18 Public within and for the State  
of New York.

0002  
2 A P P E A R A N C E S:  
3 LAW OFFICES OF STANLEY  
ROSENBLATT, P.A.  
4 Attorney for  
Plaintiff  
5 66 West Flagler  
Street, 12th Floor  
6 Miami, Florida 33130  
7 BY: JOHN HOAG, ESQ.  
8 DEBEVOISE & PLIMPTON,  
ESQS.  
9 Attorneys for  
Defendants  
10 875 Third Avenue  
11 New York, New York  
10022  
12 BY: BRUCE G. MERRITT,  
ESQ.  
13 -and-  
14 STEVEN S. MICHAELS,  
ESQ.

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(2) Whereupon, J A M E S F. G L E N N,  
(3) called as a Witness, after having been first duly (4)  
sworn by Phyllis Sax, a Notary Public within and (5)  
for the State of New York, was examined and (6)  
testified as follows:

(7) EXAMINATION BY (8) MR. HOAG:

(9) Q Please state your name for the record.

(10) A James F. Glenn.

(11) Q Where do you reside, sir?

(12) A **REDACTED**

(14) Q

(16) A

(17) **REDACTED**

(20) Q Just for the record, Doctor, my name is John  
Hoag (21) and I am with Stanley Rosenblatt, Professional  
(22) Association. We represent the plaintiff in the (23)  
lawsuit you are being deposed on today, which is (24)  
Engle versus Philip Morris, et al.  
(25) We also represent the plaintiff in the

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(3) Brain case, which is the case involving the (3)  
inadvertent smoke and flight attendants. You (4) would  
have been deposed in that case in 1993, I (5) believe.  
(6) Also present in the room along with me and (7)  
you is the court reporter who is taking down (8)  
everything we say. I know you have been deposed (9)  
before so I do not have to go over a huge amount (10)  
of information about what a deposition is.

(11) Also present in the room are two attorneys (12) that  
represent CTR.

(13) MR. HOAG: Would you introduce (14) yourselves,  
gentlemen?

(15) MR. MERRITT: Bruce Merritt from (16) Debevoise  
& Plimpton, for the witness and (17) the CTR.

(18) MR. MICHAELS: Steven Michaels, also (19)  
representing the witness and the CTR.

(20) Q Other than the deposition that was taken in (21)  
November of 1993 in Miami, Florida in the Brain (22)  
case, have you ever been deposed in any other (23)  
cases?

(24) A Yes.

(25) Q Were they tobacco related cases?

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(2) A Yes.

(3) Q How many were tobacco related cases?

(4) A One other.

(5) Q What was that?

(6) A It was the State of Mississippi.

(7) Q That was the Attorney General's case?

(8) A Yes.

(9) Q How long ago was that?

(10) A There were actually two parts to the (11)  
deposition. They were both within the past year.

(12) Q When you say "within the past year," was it (13)  
within the past six months, Doctor, or do you (14)  
remember?

(15) A The most recent one was within the past six (16)  
months.

(17) Q So when you say two parts, the parts were fairly  
(18) separated out in time?

(19) A Yes.

(20) Q How separate in time were the two parts?

(21) A Probably three months.

(22) Q Why such a big difference from one to the  
other, (23) Doctor?

(24) A I have no idea.

(25) Q Was it just a continuation of the deposition?

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(2) A Yes.

(3) Q Were they both done here in New York?

(4) A Yes.

(5) Q Who took the deposition for the plaintiff?

(6) A Mr. "Muckley."

(7) Q What was the total length of time for the (8)  
deposition?

(9) A I think the first segment probably was of (10) the  
magnitude of four or five hours.

(11) The second one was of equal duration.

(12) Q What preparation, if any, did you do prior to (13)  
that deposition?

(14) A No special preparation. I refreshed my (15)  
memory about our grant program, the magnitude of (16)  
what the CTR has given to the medical community, (17)  
the history of our scientific advisory board.

(18) Q Anything else?

(19) A I don't remember anything specifically.

(20) Q Did you give any information about special (21)  
projects?

(22) A I am familiar with special projects over (23) the  
past, but I have had no personal involvement (24) with  
them.

(25) Q You met with your attorneys prior to that

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(2) deposition?

(3) A Yes.

(4) Q Which attorneys did you meet with?

(5) A Mr. Merritt, Mr. Michaels, Mr. Klugman.

(6) Q Those are all CTR attorneys?

(7) A Yes, they are.

(8) Q How long did you meet with them before the  
(9) deposition you took in the Mississippi case, (10)  
Doctor?

(11) A I have no idea. Some of our meetings are (12)  
social; some are business.

(13) We enjoy each other's company. I cannot (14) tell  
you how long it was.

(15) Q But you did have meetings specifically related to  
(16) discussions or preparations regarding the (17)  
Mississippi case?

(18) A Yes.

(19) Q Was it more than five hours long?

(20) A I can't remember that specifically.

(21) Q Were you shown any documents during the  
meetings (22) prior to the deposition?

(23) A Yes, I have reviewed documents on advice of (24)  
counsel.

(25) Q What specific documents did you review on the

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(2) advice of counsel?

(3) A It's a pretty broad question.

(4) MR. MERRITT: If I can chime in, I can (5) tell  
you if you are interested in hearing (6) it from me.

(7) MR. HOAG: Maybe it will refresh his (8)  
recollection.

(9) MR. MERRITT: Dr. Glenn has reviewed (10) all of  
the documents that have been filed (11) and used

affirmatively by the plaintiffs in (12) the various lawsuits that are pending now (13) against CTR.

(14) All of the documents related to the (15) CTR we have shown to him over time and that (16) I think is primarily the set of documents (17) he reviewed in connection with these (18) depositions.

(19) MR. HOAG: Okay. I appreciate you (20) telling me that so we can maybe go a little (21) quicker.

(22) MR. MERRITT: I am not sure if he (23) understands how they were selected, but (24) that was the criteria.

(25) MR. HOAG: You mean all of the cases

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(2) in Mississippi, Florida and all of the (3) other lawsuits?

(4) MR. MERRITT: For the most part (5) the Attorneys General cases, the documents (6) that were used in Mississippi.

(7) For the most part the "Butler" and the (8) Attorneys General cases.

(9) MR. HOAG: Okay.

(10) Q Your attorney explained the types of documents (11) you looked at.

(12) Is that pretty much your understanding, (13) Doctor, that you looked at documents that were (14) used in other lawsuits that related to the CTR?

(15) A Yes.

(16) Q Were you familiar with all of those documents (17) prior to the time you were shown them by the (18) attorney?

(19) A No, sir.

(20) Q What percentage of the documents that you looked (21) at had you never seen that were shown to you by (22) your attorney in preparation for your deposition, (23) sir?

(24) A Probably the majority of the documents were (25) unfamiliar to me because they were not from CTR

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(2) files and did not reflect CTR activities.

(3) Q The documents that did reflect CTR activities, (4) were you familiar with those?

(5) A Documents that were a part of the CTR (6) records were familiar to me, but there were (7) documents that were from other files that made (8) reference to CTR that were not familiar to me.

(9) Q By "documents that were a part of the CTR (10) records," what do you mean?

(11) A I mean the grant applications and awards, (12) the reprints and abstracts that resulted in that (13) research, the minutes of our scientific advisory (14) board meetings, the minutes of our board of (15) directors meetings, correspondence, CTR files and (16) the files generally related to doing business and (17) operating the grants in a program.

(18) Q How long does CTR keep the correspondence files, (19) sir?

(20) A Forever.

(21) Q Forever? That is a long time.

(22) When you say "correspondence," how are you (23) defining that?

(24) A I am defining it as copies of letters that (25) were written by members of the CTR and letters

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(2) that were written to the CTR.

(3) Obviously I have not reviewed every piece (4) of information in our files, but I have seen a (5) fair representation.

(6) Q And all of it is available to you if you want to (7) look at it?

(8) A Yes, sir.

(9) Q When you say forever, I know you do not mean (10) infinitely, from when to when?

(11) A Well, the CTR was founded in 1954 as the (12) Tobacco Industry Research Committee and we have (13) records that date back to the inception of the (14) former.

(15) Q To the inception of the Tobacco Research (16) Committee?

(17) A Yes.

(18) Q Which later became or was called the Council for (19) Tobacco Research, and that happened when, Dr. (20) Glenn?

(21) A 1964. It was incorporated in 1971.

(22) Q It was incorporated in 1971?

(23) A Yes.

(24) Q How long have you been involved in any way with (25) the TIRC and/or later the CTR?

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(2) A The name TIRC had evaporated in 1964, so I (3) never had any personal association with it.

(4) I have been involved with the Council for (5) Tobacco Research for ten years.

(6) Q When I say "involved," sir, when I used that word (7) I mean even if you applied for, received grants, (8) had any relationship whatsoever with the (9) organization.

(10) Is your answer still ten years?

(11) A Well, during the interval I was chairman of (12) the urology department at Duke University I (13) received grant funds from the tobacco industry (14) for work in the pharmacology and physiology of (15) smooth muscle of the urinary tract.

(16) That money was derived from the tobacco (17) industry, so in that sense yes, I was involved.

(18) Q What year was that?

(19) A It would be in the 1960's.

(20) Q After 1964?

(21) A After '64.

(22) Q When this money was received for research (23) purposes when you were the chairman of the (24) urology department at Duke it was called TIRC; is (25) that correct?

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(2) A Well, no.

(3) The money that we received from the tobacco (4) industry came through the American Medical (5) Association as the grantor and exactly how the (6) funds were transmitted to the AMA is unknown to (7) me, but it was industry money.

(8) We were working on pharmacology and (9) physiology of the smooth muscle in the urinary (10) tract and one of the agents that promotes normal (11) peristaltic activity in the urinary tract and in (12) the intestinal tract is nicotine and clearly it (13) was in the interests of the tobacco industry to (14) know more about the physiology and pharmacology (15) of that particular substance.

(16) Q Nicotine has some effect on the urinary tract, (17) Doctor?

(18) A Yes, and on the smooth muscle of the (19) intestinal track as well.

(20) Q Was it prior to the time you did this research in (21) the 1960's that it was known to be beneficial,

- (22) Doctor?  
 (23) A Yes, but it had not been quantitated (24) scientifically.  
 (25) Q So is it fair to say part of what the research

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- (2) was supposed to do was to quantify the level that  
 (3) nicotine was beneficial?  
 (4) A Yes.  
 (5) Q What did you find?  
 (6) A Oh, you can enhance peristaltic activities (7) of both the urinary tract and the intestinal (8) tract by administration of nicotine and similar (9) products.  
 (10) Q How long did this research last that was funded  
 (11) either directly or indirectly by the tobacco (12) industry?  
 (13) A I can't remember exactly, but probably over (14) a period of two years.  
 (15) The actual work was done by two of my (16) associates at that time who were working in the (17) laboratory, but the grant was to our department.  
 (18) Q How much was the grant for?  
 (19) A I can't remember.  
 (20) It was not enormous, because research funds (21) were not particularly generous in those days.  
 (22) Q Who actually applied for the grant?  
 (23) A I did, along with my associate, Dr. Saul (24) "Boyorski."  
 (25) Q What was the process of applying for the grant.

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- (2) Doctor?  
 (3) A We submitted a routine application to the (4) American Medical Association.  
 (5) Q Doctor, how--if you know the answer fine; if you  
 (6) do not know tell me--how was the AMA set up to  
 (7) make decisions about those applications?  
 (8) A I don't know what their internal (9) arrangements were.  
 (10) Q Do you know anything at all about the  
 (11) procedure (12) that they used to accept or reject  
 (13) applications (14) during that period of time?  
 (15) A I don't know what their process was.  
 (16) Q Do you know who made the decision or any (17) decisions concerning the application that you (18) submitted?  
 (19) A I don't know who did it.  
 (20) Q Did you know anything about the organizational  
 (21) structure of the AMA at that time?  
 (22) A Yes.  
 (23) Q What did you know about the organizational (24) structure of the AMA at that time?  
 (25) A Well, I was the secretary of the section on (26) urology and subsequently the chairman of the (27) section of urology of the AMA so I was intimate

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- (2) with the operations of the AMA.  
 (3) That was not entirely extraneous to the (4) grant process.  
 (5) Q Okay.  
 (6) A The American Medical Association structure (7) and function has changed over the years, but I (8) don't think the fundamental mechanism of grant (9) awards has particularly changed. They are (10) competitive grants.  
 (11) Q Back in 1964 you were the secretary of the (12) section on urology for the AMA?

- (13) A I can't remember the years, but it's in my (14) CV and I believe you have that.  
 (15) Q It was during the period of time that you applied (16) for this grant?  
 (17) A I can't tell you that, Mr. Hoag. This is (18) 30 years ago. I don't remember the time (19) relationships, but it's in my CV.  
 (20) You can see from my curriculum vitae (21) exactly what dates I served in the capacity of (22) secretary and chairman of the section of urology.  
 (23) Q What are the duties of the chairman of the (24) section of urology for the AMA?  
 (25) A It no longer exists. The AMA no longer has

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- (2) a scientific program that has been delegated to (3) the various specialty organizations.  
 (4) In that era the section for each of the (5) specialties was responsible for scientific (6) programs, for soliciting papers and presentations (7) and for inviting guest speakers, for organizing (8) the program and conducting the program.  
 (9) Q How many physicians were members of this section (10) at that time?  
 (11) A I can't tell you. I can't recall that.  
 (12) I would say that the preponderance of (13) urologists nationwide have been members of the (14) American Medical Association, so in that sense (15) you would say there are several thousand members (16) of the section.  
 (17) Now, attendants at the meeting and (18) participation in the program would be limited to (19) a much smaller number, obviously.  
 (20) Q The research that was done and which took a  
 (21) couple of years in the 1960's that was funded by  
 (22) the tobacco industry through the AMA at Duke, was  
 (23) any of it published?  
 (24) A Yes.  
 (25) Q Where was it published?

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- (2) A Well again, if you've got my curriculum (3) vitae and bibliography, those papers will be (4) apparent to you.  
 (5) I don't have a copy with me at this time so (6) I can't cite the specific references.  
 (7) Q Is it more than one paper that was published as a (8) result of that research?  
 (9) A Yes, and a book was published. It was not (10) specifically about that research alone, but about (11) the physiology of smooth muscle of the urinary (12) tract.  
 (13) Q Was that the title of the book?  
 (14) A No, but again, that is in my CV and if you (15) have a copy I will cite the reference for you.  
 (16) Q I do not have a copy of it with me.  
 (17) A Neither do I.  
 (18) Q Without looking at your CV you do not remember (19) the title of the book?  
 (20) A No.  
 (21) Q I need to ask you some basic questions, sir.  
 (22) Some of them will be things which seem simple to  
 (23) you, but since I am not an expert in any way in  
 (24) urology I need to ask them so I can understand.  
 (25) That is your specialty area, sir; is that

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- (2) correct?  
 (3) A Yes.

(4) Q Does urology ever include doing any kind of (5) experiment, for example, like looking at the (6) urine of somebody to see if there is any (7) mutations in cells, anything like that?

(8) A Yes.

(9) Q How does that work?

(10) A Well, you can accomplish a urinary cytology (11) examination similar to the so-called Pap smears (12) that are done for the cervix, and alterations in (13) cellular morphology can be detected by the (14) cytologic techniques employed.

(15) Q Have you ever done anything like that?

(16) A No. That's a histological examination done (17) by the pathologist, pathologists who specialize (18) in cytology, but I have ordered the tests (19) literally in hundreds of patients.

(20) Q Do you know whether or not cigarette smoke, (21) people that are exposed to cigarette smoke, do (22) have evidence of mutations that have been found (23) in cells by looking at the urine?

(24) MR. MERRITT: Objection to the form of (25) the question.

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(2) A If I understand your question, alterations (3) in urinary cytology may be seen in both smokers (4) and nonsmokers.

(5) I don't know of any difference between the (6) two groups.

(7) Q Do you know if there have been any studies to see (8) if there have been any differences in the two (9) groups?

(10) A I don't know of any, but experience tells (11) me both nonsmokers and smokers may or may not (12) show cytologic changes.

(13) Q Does experience tell you which ones would have (14) more or less cytologic changes?

(15) A I don't think there are any particular (16) changes.

(17) People who have the most profound cytologic (18) changes are those who have chronic urinary (19) infection or the people who have ovarian cancer, (20) cancer of the urothelium, which—that involves (21) the kidneys, the ureters, the bladder, the (22) urethra.

(23) Q When you say "cytologic changes," what do you (24) mean?

(25) A I mean any alteration in a normal cellular

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(2) appearance, inflammatory change, malignant (3) change, premalignant change.

(4) Q What about mutations?

(5) A Mutation and change mean the same thing.

(6) Q That is one of my basic questions which you need (7) to help me out with.

(8) When you say change, Doctor, it is the same (9) as mutation?

(10) A Yes, essentially.

(11) Q Would that be useful research to do, Doctor?

(12) By that I mean would it be useful to do (13) research to find out if the level of mutation is (14) different for people exposed to cigarette smoke (15) versus people who are not?

(16) A Well, as I said, I am not sure it would be (17) very rewarding to try to sort that out because (18) most smokers and nonsmokers have this variation (19) which is evident.

(20) So I am not sure it would tell us very (21) much, you know.

(22) Q You do not know one way or the other whether it (23) would tell you very much?

(24) A It might and might not.

(25) Q That is true of a lot of research, sir; is that

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(2) true?

(3) A Yes.

(4) Q Does the CTR ever fund research where they look (5) at an application and figure something may or may (6) not show any difference, et cetera, but they will (7) still fund it because they want to find out (8) whether it does or does not?

(9) A Well, I think that is simplistic, but our (10) scientific advisory board attempts to, on the (11) basis of whether or not it is logical and whether (12) it has promise of yielding worthwhile results.

(13) So in that sense yes, discrimination is (14) made about a particular grant application based (15) upon the probability that it will yield (16) scientifically valid results.

(17) Q So far as cancer cells are concerned, do you know (18) how those are formed?

(19) A No, sir. If we knew we could solve the (20) problem.

(21) Q Do you know whether or not mutations are involved (22) in the formation of cancer cells?

(23) A Certainly.

(24) Q Are mutations involved?

(25) A Yes.

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(2) Mutation means a change in a cell, and as I (3) explained before, any deviation from the normal (4) cellular appearance is a mutation or a change and (5) a cancer cell, an inflammatory cell, exhibits (6) mutation or change from the normal pattern.

(7) Q So a necessary requirement for a cancer cell to (8) form is at least some mutation of the cell; is (9) that correct?

(10) A By definition.

(11) Q Does the CTR ever fund research regarding the (12) formation of mutations in cells—

(13) A Yes.

(14) Q —as to when those mutations occur?

(15) A Yes.

(16) Q Has the CTR ever funded any research similar to (17) what I have just spoken about, exposing or (18) separating out people exposed to cigarette smoke (19) and people who are not, and testing their urine (20) for the amount of mutations?

(21) A I can't tell you specifically over the (22) years, but we have available the annual reports (23) and there are literally thousands of papers which (24) have resulted from CTR grants and you can scan (25) those for that information.

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(2) Q But as you sit here today you do not know if they (3) funded anything like that?

(4) A I don't know specifically.

(5) Q Has anything like that been funded since you (6) worked there?

(7) A No, because most of this work has been (8) done.

(9) We know urinary cytology is an established (10) laboratory procedure and as a consequence of that (11) further research in that area would not advance (12) our

understanding of the disease process any (13) further.  
 (14) You also must understand, Mr. Hoag, that (15) the CTR does not generate the research project; (16) that is done by the independent investigator.  
 (17) We do not initiate the research, we do not (18) do it or initiate the application.  
 (19) Q The CTR decides what to fund?  
 (20) A The CTR through its scientific advisory (21) board ranks the applications according to (22) relative merit and we fund as many of them as we (23) can.  
 (24) Q Based on the ranking of merit decided by the (25) members of the board?

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(2) A The scientific advisory board, and the (3) ranking is done as it is done in the NIH, on a (4) scale of one to five with a numerical score (5) awarded to each competitively.  
 (6) Q Let's back up.  
 (7) Is the application process weighted in some (8) way? In other words, where a research proposal (9) gets more weight if it is directly related to (10) tobacco versus if it is not directly related to (11) tobacco?  
 (12) A Not currently, because the research, the (13) cutting edge of biomedical research today is very (14) fundamental and that is molecular and cellular (15) biology, what makes a cell behave the way it (16) does, what makes it misbehave, if you will, in (17) the inflammatory process or the malignant (18) process.  
 (19) Research is more directed to immunology, (20) genetics, that is where the pay dirt is, for (21) elaboration of basic knowledge and information.  
 (22) In years past more direct research was done (23) with cigarette smoke exposure of animals. It was (24) very unrewarding, nonproductive, and as with all (25) other biomedical research, it has--the focus has

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(2) turned toward molecular and cellular biology, the (3) genetic events that occur that might predispose (4) an individual to one disease or another.  
 (5) So today I would have to say that we have (6) gone from macroscopic research to microscopic and (7) now to molecular events.  
 (8) That has not only been the experience at (9) CTR, but also the National Cancer Institute and (10) other national institutes of health, other (11) private granting such as the American Cancer (12) Society, American Lung, American Heart, (13) investigators in all fields of medical research (14) now are using molecular techniques in order to (15) get to the base of disease.  
 (16) We are just on the threshold of (17) understanding the genetic events that take place (18) in an individual that may predispose them to one (19) disease or another.  
 (20) For example, we are now comfortable with (21) the information that there are women who have (22) genetic predisposition to concurrent breast and (23) ovarian cancers, two very lethal diseases, and (24) there are families that can be identified (25) genetically in which this risk occurs.

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(2) Similarly some of the research that we have (3) supported over the years led to the (4) identification of the genetic abnormalities that (5) predisposes certain individuals to the familial (6) nonpolyposis cancer of the colon.  
 (7) We have also supported genetic research (8) that

has been a part of the development of (9) information relative to cancer of the eye in (10) infants or so-called retinoblastoma. These (11) children can be identified antenatally by (12) amniocentesis identification of the cellular (13) genetic pattern, so at birth the ophthalmologist (14) can begin looking into the eye with a slit lamp (15) and as soon as they see abnormal cells they can (16) treat them with a laser and destroy the malignant (17) cells and they do this repeatedly until the (18) child is four or five years old, at which time (19) they tend to outgrow the tendency to make this (20) cancer.

(21) So what has happened with retinoblastoma (22) over the last 30 or 40 years has been a total (23) reversal of the picture.

(24) When I was a medical student retinoblastoma (25) was a death warrant for a child and today they

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(2) can all been identified prenatally and treated (3) and the success rate is virtually 100 percent.  
 (4) So it's one of the real success stories of (5) medical research. That is the sort of research (6) that we have supported.  
 (7) Q The retinoblastoma--am I pronouncing it (8) correctly?  
 (9) A Retinoblastoma.  
 (10) Q --the CTR supported research into that area?  
 (11) A Yes.  
 (12) Q For how many years?  
 (13) A I can't tell you that. Certainly within (14) the last ten years, during my tenure.  
 (15) The retinoblastoma gene applies not only to (16) retinoblastoma, but to other cancers. It's (17) called the RB gene and its nomenclature for that (18) particular genetic abnormality.  
 (19) Q The "retino" stands for eye?  
 (20) A Retina is the image mechanism of the eye, (21) the back of the eyeball.  
 (22) Q This is a cancer that children get?  
 (23) A Yes.  
 (24) Q Has tobacco ever been implicated as a cause of (25) this eye cancer?

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(2) A No. It's a genetic defect and I strongly (3) suspect that most cancers are genetically (4) induced.  
 (5) It would not surprise me that by the time (6) we complete the so-called Human Genome Project, we (7) will have mapped all of the potential genetic (8) abnormalities and identified those people who are (9) at risk for various cancers.  
 (10) Perhaps not all of them, but many of them, (11) and of course when we find somebody who has the (12) genetic predisposition, that is the time when you (13) initiate preventative measures that may be very (14) worthwhile.  
 (15) For instance, a patient with familial (16) incidence of colon cancer can be advised of diet (17) and other factors that would perhaps minimize (18) exposure to other risk factors that could trigger (19) that genetic process.

(20) Q Going back to the research that CTR funded (21) related to eye cancer that children suffer from, (22) Doctor--

(23) A It related to the retinoblastoma gene.  
 (24) I used the eye as an example because it's (25) so clear and simplistic. But the retinoblastoma

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(2) gene, which has been identified, and work with (3) the retinoblastoma gene has been supported by CTR (4) relative to a number of potential malignancies.  
(5) The work is very fundamental not always has (6) clinical application as simple and clean as I (7) explained about the retinoblastoma in children.  
(8) Q How much funding has the CTR provided for that (9) over the years?  
(10) A I can't tell you.  
(11) Q Do you know what percentage of the CTR's funding (12) was for that particular research?  
(13) A No. That would be very difficult to sort (14) out.  
(15) I can tell you categorically that our (16) research support breaks down roughly into cancer, (17) animal disease, but that includes genetic (18) abnormalities, chromosomal abnormalities, lots of (19) fundamental mechanisms.  
(20) About half of our total research budget at (21) the present time goes into projects that are said (22) to be cancer related and the remainder of our (23) budget goes into categories of cardiovascular (24) disease, pulmonary disease, immunology, central (25) nervous system and other categories and that

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(2) information is also available in the annual (3) report.  
(4) Q It is?  
(5) A I am sure you have an annual report from (6) CTR.  
(7) Q We probably have many.  
(8) The Human Gnome Project, is the CTR (9) involved in working on that at all?  
(10) A Well, the Human Gnome Project is federally (11) sponsored; it's a national project.  
(12) We have sponsored research that relates to (13) the Human Gnome Project and any time that one of (14) our investigators identifies a new genetic (15) abnormality, that becomes a part of the total (16) spectrum of understanding of the Human Gnome.  
(17) It's a massive project and we get (18) information one little bit after another. It's (19) not something that is just a sweeping change, but (20) rather an infinite process.  
(21) Q Is there any disease that does not have something (22) to do with the genes?  
(23) A I don't know that.  
(24) Q You do not know that there is any disease that (25) does not have something to do with genes, Dr.

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(2) Glenn?  
(3) A I don't know one way or the other. I (4) strongly suspect there is a genetic (5) predisposition, perhaps inherited, familial.  
(6) Certainly all of us can cite families where (7) they seem to have a terrible allergic history, (8) they are allergic to all sorts of substances; (9) other families where respiratory infections are (10) prevalent; other families where cancer is (11) prevalent. You read these things in the (12) newspaper from time to time.  
(13) So most certainly there is some genetic (14) predisposition to various diseases, but I don't (15) know that I can say all, or that there are any (16) that are not related to genetic predisposition.  
(17) I think that for me would be a leap of faith.  
(18) Q Is there any general research that would not be

(19) appropriate for the Council for Tobacco Research (20) to fund?  
(21) A I think any time we support genetic (22) research we are adding to the total body of (23) medical information and it's the totality of (24) research that will will bring us the answers that (25) we need, or closer to the answers that we need.

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(2) Q What is the mission of the Council for Tobacco (3) Research?  
(4) A To support basic biomedical research and (5) initially, as stated, to focus on issues of (6) tobacco and health.  
(7) Q What does that mean, "to focus on issues of (8) tobacco and health"?  
(9) A Well, I think it means that ideally the (10) research we support should have some implication (11) for issues surrounding health and tobacco use and (12) I think we meet that broad charge any time we (13) support fundamental research into biomedical (14) mechanisms.  
(15) Q When you say "broad charge," Doctor, what do you (16) mean?  
(17) A The broad charge is issues of smoking and (18) health, and any time we support issues that (19) enhance our understanding of molecular and (20) cellular biology, what makes a cell go wrong, we (21) are meeting that responsibility.  
(22) Q Is there any research that the CTR would fund (23) that would not meet that responsibility, Dr.  
(24) Glenn?  
(25) A Very little. Obviously it would be outside

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(2) of our area of interest to support such things as (3) a sleep laboratory, for example.  
(4) Within the last two or three years we got a (5) grant application from a very competent (6) investigator who wanted to set up a laboratory to (7) study sleep patterns. We found that to be the (8) board felt it was beyond our broad range.  
(9) So there are things that are outside of the (10) realm, but any research into fundamental disease (11) mechanisms, cellular and molecular biology, is (12) relevant to the issues of smoking and health.  
(13) Q Are the applications most directly related to (14) tobacco more likely to be funded than those less (15) directly related to tobacco?  
(16) MR. MERRITT: Objection to the form.  
(17) A The short answer is no.  
(18) The detailed answer would have to be what (19) do you mean by "related to tobacco," because (20) virtually any research could be related to (21) tobacco.  
(22) Tobacco is a known risk factor for a number (23) of diseases and it's been well-known for 100 (24) years, that the use of tobacco is a risk factor (25) for various disease processes.

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(2) Therefore, if we can understand what makes (3) the cell go wrong we can then begin to think in (4) terms of how to prevent this particular event and (5) in that sense virtually any basic research that (6) comes along can be said to be related.  
(7) Therefore, I don't think we can say there (8) is any weight given to a project as to whether it (9) is directly related to tobacco use or not.  
(10) That's the lengthy answer.

(11) Q So projects are no more likely to be funded if (12) they are directly related to tobacco than if they (13) are not directly related to tobacco?

(14) MR. MERRITT: Objection to the form.

(15) A Today it's very rare for us to get an (16) application that is, as you say, directly related (17) to tobacco because research is not-has (18) progressed from the macroscopic to the (19) microscopic to the molecular level.

(20) That is true across the board for (21) biomedical research. We are now down to the (22) cellular level and the molecular level, trying to (23) determine what signals a cell can receive that (24) will make it behave in a certain way.

(25) This is the short course that is difficult

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(2) for me to put into lay terms, but what I am (3) trying to get at is the fact that macroscopic (4) type of research like you're talking about does (5) not exist anymore. Nobody want to expose animals (6) to cigarette smoke any longer; it was very (7) nonproductive research.

(8) Q Is that pretty much the only kind of research (9) that you can think of that is directly tobacco (10) related--

(11) A No.

(12) Q --exposing animals to smoke?

(13) A No. Many areas of research--we are (14) supporting a number of projects related to (15) nicotine and how nicotine works on the central (16) nervous system.

(17) In your brain there are two kinds of (18) receptors, muscarinic and nicotinic. That is the (19) generic name. (20) Nicotine is not the only thing that (21) triggers an nicotinic receptor. We can now (22) identify a focus of activity of nicotine in the (23) human brain and that has been a project funded by (24) the Council for Tobacco Research.

(25) Q Does the Council for Tobacco Research ever fund

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(2) research on nicotine related to any positive (3) qualities of nicotine?

(4) A Well, I explained earlier research we did (5) showed the very beneficial effects of nicotine on (6) smooth muscle activity for peristalsis, urinary (7) and intestinal.

(8) And it's not just nicotine from tobacco.

(9) Fresh tomatoes you had on your sandwich last (10) night has a very high nicotine content. Nicotine (11) and nicotine-like substances have a very (12) important role in normal central nervous system (13) function.

(14) Q So the CTR funds research regarding the important (15) role nicotine serves in the central nervous (16) system; is that correct?

(17) A Not necessarily the important role it (18) serves, but rather the mechanisms of the action (19) of nicotine.

(20) Q Does nicotine affect the dopamine level in the (21) brain?

(22) A Yes.

(23) Q Does the CTR do research regarding how it affects (24) the dopamine level?

(25) A Yes.

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(2) Q Have you ever compared the effects of cocaine, (3) for example, on the dopamine level versus the (4)

effects of the nicotine on the dopamine level?

(5) A The CTR has never done any research itself, (6) so--

(7) Q Has it ever funded any research to compare the (8) effects on the dopamine level of cocaine as (9) compared to the effects of nicotine on the (10) dopamine level?

(11) A I am reluctant to misspeak, but I believe (12) the answer is yes.

(13) Nicotine does not have the same effect on (14) the central nervous system or dopamine release (15) that cocaine and other addicting substances have.

(16) Q Nicotine does cause a release of dopamine; (17) correct?

(18) A Correct.

(19) Q Cocaine causes a release of dopamine; is that (20) correct?

(21) A To my knowledge, yes.

(22) Q My question--

(23) A But the magnitude of the two is quite (24) different, cocaine being a truly addictive (25) substance.

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(2) Nicotine, as everyone knows, is (3) habituating, but it's not the same sort of (4) addicting substance that cocaine would be.

(5) Q You have pretty much made that decision, Dr. (6) Glenn?

(7) A I think everybody made that decision.

(8) Q That nicotine is not addictive?

(9) A No. I said nicotine is habituating, and if (10) your definition of habituating includes (11) addiction, I would accept your term, but (12) certainly not of the same category.

(13) Cocaine and other opiants and so on have a (14) much more profound activity on the dopamine (15) release system than does nicotine. So in that (16) sense most experts on addiction, I think, would (17) tell you that this is a different kettle of fish.

(18) Q You are saying that the CTR did research--

(19) A It has not done any research.

(20) Q Has the CTR funded research regarding the effects (21) of cocaine versus the effects of nicotine on the (22) dopamine level?

(23) A I can't tell you that.

(24) Q But you can tell me you have an opinion regarding (25) cocaine's effect on dopamine as compared to

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(2) nicotine's effect on dopamine?

(3) A I did not say that.

(4) Q You do not have an opinion regarding cocaine's (5) effect on the dopamine level and nicotine's (6) effect on the dopamine level?

(7) A I think the facts are perfectly obvious to (8) most people that nobody kills for a cigarette; (9) that the effects of cocaine on an individual is (10) certainly much more profound than the effects of (11) nicotine.

(12) Q You do not know of any research the CTR has (13) funded regarding comparing the effects of cocaine (14) to the effects of nicotine; correct?

(15) A I don't know of any specific research of (16) that nature.

(17) We have supported a good bit of research on (18) the mechanisms of functions of nicotine.

(19) Q And much of it looks at positive aspects of (20) nicotine?

- (21) A No, sir.  
 (22) Q The research that was funded a long time ago when (23) you worked at Duke looked at the positive (24) aspects?  
 (25) MR. MERRITT: That was not the CTR, as

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- (2) you will recall from the prior testimony.  
 (3) MR. HOAG: I do not recall that.  
 (4) A Yes, you do, because I told you that was (5) funded by the AMA.  
 (6) Q You said it was funded by the tobacco industry (7) through the AMA.  
 (8) A The AMA made the grant.  
 (9) Q You said something relating to killing, that (10) people do not kill for nicotine, is that what you (11) said, Doctor, as compared to cocaine?  
 (12) A No, I did not say that. The record will (13) show I said people do not kill for cigarettes.  
 (14) Q People kill for cocaine?  
 (15) A Yes.  
 (16) One can read any of the popular journals (17) such as the New York Times on a daily basis and (18) find drug-related killings.  
 (19) Q Do people die from nicotine?  
 (20) A Not to my knowledge.  
 (21) Q Do you know anyone who has died as a result (22) of their craving for nicotine through the smoking of (23) cigarettes?  
 (24) A No.  
 (25) Q Do you believe or is it correct that it is more

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- (2) likely than not in the history of the world at (3) least one person has died as a result of their (4) craving for nicotine, Doctor?  
 (5) MR. MERRITT: Objection to the form.  
 (6) A I don't understand the question.  
 (7) MR. HOAG: Could you read it back, (8) please?  
 (9) (Whereupon, the record was read (10) by the reporter.)  
 (11) A I can't answer a question like that.  
 (12) That's a really--that's really so convoluted, I (13) don't know that there is an answer to a question (14) like that.  
 (15) Q So you do not understand that question?  
 (16) A I don't think that is a question. I think (17) that is an editorial comment.  
 (18) Q The way it was phrased, Doctor, do you agree or (19) disagree with it?  
 (20) MR. MERRITT: There is no question (21) pending. He has given you the answer.  
 (22) Q You understood it to be an editorial comment, (23) Doctor?  
 (24) A Yes.  
 (25) Q What was that editorial comment you understood it

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- (2) to be?  
 (3) A Are you saying someone somewhere in the (4) history of the world must have died as a result (5) of a craving for nicotine?  
 (6) I don't know that one way or the other.  
 (7) Q So your answer is you do not know?  
 (8) A Correct.  
 (9) Q Is it you did not understand the question?  
 (10) A It is not a question; it's an editorial (11)

comment, I believe.

- (12) Q When I said, Doctor, "is that correct or not," (13) that is a question; right?  
 (14) MR. MERRITT: I think we are getting (15) into an argumentative debate here.  
 (16) Q Is that correct?  
 (17) A It is argumentative, you know.  
 (18) Q All I am asking is if you agree with it or not, (19) Doctor.  
 (20) A It's also--  
 (21) MR. MERRITT: Wait. There is no (22) question pending.  
 (23) Q There is a question pending, Doctor. I am just (24) asking you if you agree with it or not.  
 (25) If you characterize it as an editorial

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- (2) comment, that is all right with me. I am asking (3) you if you agree with that editorial comment.  
 (4) A You would have to offer me proof of that (5) conjecture before I can make an opinion.  
 (6) Q So you do not believe there is any proof that (7) even one person in the history of the world has (8) ever died as a result of a craving for nicotine, (9) Doctor?  
 (10) MR. MERRITT: Objection to the form.  
 (11) A I don't know. I would need to see the (12) documentation.  
 (13) Q You are aware that some people who have been (14) diagnosed with lung cancer continue to smoke; is (15) that correct, sir?  
 (16) A I am told this, yes.  
 (17) Q They continue to smoke cigarettes?  
 (18) A Yes.  
 (19) Q In all of your years as an experienced physician (20) have you ever known a patient who was diagnosed (21) with lung cancer who continued to smoke (22) cigarettes?  
 (23) A Yes.  
 (24) Q You have personal knowledge of this?  
 (25) A Yes, I do.

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- (2) Q Okay.  
 (3) And do you also have personal knowledge, (4) sir, that there are some individuals who even (5) after having a tracheotomy will puff the (6) cigarette through the hole in their throat?  
 (7) A I have never observed that, but I have been (8) told that.  
 (9) Q Do you consider that to be addiction?  
 (10) A Habituation, but not addiction.  
 (11) Q That would be pretty strong evidence, would it (12) not, of somebody dying for cigarettes?  
 (13) MR. MERRITT: I will object to the (14) form of the question.  
 (15) A I think that is leap of faith too. You're (16) mixing the question of addiction with the (17) question of cause of death, and I don't (18) understand how I can relate those two.  
 (19) Q I guess I am right now mixing smoking cigarettes (20) with the cause of death.  
 (21) Do you have a problem with relating one to (22) the other?  
 (23) A I have a big problem when you talk about (24) cause. What do you mean by "cause"? What is (25) your definition?

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- (2) Q Let me put it to you this way or let me ask you (3) this question: Do you believe that it is more (4) likely than not that cigarette smoking results in (5) the death of at least one person in the United (6) States each year?
- (7) A I don't know of a single death certificate (8) where the cause of death has been attributed to (9) smoking.
- (10) The cause of death is coronary artery (11) disease, carcinoma of the stomach, bladder (12) cancer, trauma, stroke.
- (13) Now we all know, it does not take a (14) scientist to know, there are diseases that are (15) more commonly associated with smoking and those (16) risk factors have been known for decades.
- (17) Q Are they causally associated?
- (18) A Do you mean that smoking is the actual (19) causative factor, that nicotine or tobacco is the (20) causative factor?
- (21) If so, I would go back to the definition of (22) cause--cause and effect.
- (23) Q Do you have a definition for "causal (24) association"?
- (25) A Well, I have two definitions. If you use

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- (2) the term "cause" in the lay sense, then we can (3) say that driving at a high speed on a slippery, (4) winding road is a cause of death. Actually the (5) cause of death would be massive head injury or (6) other traumatic events.
- (7) But in the loose sense, in the lay sense, (8) if you say the cause of death was driving at a (9) high rate of speed on a dangerous highway, that (10) is the lay interpretation. The tubercle bacillus (11) causes death.
- (12) There has not been any demonstrated (13) causation for the diseases that are associated (14) with smoking, and indeed we know that 93 percent (15) of smokers never get into any problems, any (16) health problems.
- (17) The other 7 percent do have a problem, and (18) the rate, for example, of lung cancer is probably (19) four times higher in smokers than nonsmokers.
- (20) That is a known risk factor and people have known (21) this for many years.
- (22) Q The rate for what?
- (23) A If you interrupt me I can't very well (24) answer. I was trying to answer the question.
- (25) Q The rate of lung cancer is four times--

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- (2) A 80 percent of the people who die of lung (3) cancer have been smokers.
- (4) The other side of that coin is 20 percent (5) of people who die from lung cancer have not been (6) smokers, and we know this; these are scientific (7) facts that have been available to us for many, (8) many years.
- (9) Q So assuming that, the 80 percent-20 percent that (10) you just established or stated, is your (11) understanding, then do you mean that the rate of (12) lung cancer for smokers is four times higher? Is (13) that what that means?
- (14) A 80 to 20 is about 4 to 1.
- (15) Q Is that your understanding of how you figure out (16) the risk ratio?
- (17) A I am sorry, I don't understand your (18) question.
- (19) Q Do you know what a risk ratio is?
- (20) A I know medically what it is.

- (21) Q Is that how you figure the risk ratio, the (22) numbers you just came up with there?
- (23) A No. There are many other factors that come (24) into a risk ratio and I am not an epidemiologist (25) and I cannot give you the scientific precision

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- (2) that you're asking for.
- (3) Q I am not asking for that. I am asking for your (4) understanding--
- (5) A I am--
- (6) Q I am asking for your understanding of the numbers (7) you are throwing out, the four times as likely to (8) get lung cancer.
- (9) A Well, I--
- (10) MR. MERRITT: There is no question (11) pending.
- (12) Q That means he does not want you to talk anymore; (13) you are saying too much.
- (14) MR. MERRITT: It means that the (15) deposition operates on a system by which (16) you ask questions and he answers.
- (17) When you are just talking and not (18) asking questions, he does not have an (19) obligation to answer.
- (20) MR. HOAG: Okay.
- (21) He does not want you to talk right (22) now. That is okay; I can put it in (23) questions.
- (24) MR. MERRITT: This a good point to (25) take a break. We have been going over an

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- (2) hour.
- (3) MR. HOAG: I guess so.
- (4) MR. MERRITT: It is up to you.
- (5) MR. HOAG: Do you want to break now?
- (6) THE WITNESS: Whatever you say.
- (7) MR. HOAG: I would like to ask a (8) couple of more questions.
- (9) Any time you want to break, Doctor, I (10) will stop.
- (11) THE WITNESS: Okay.
- (12) Q You said 93 percent of smokers do not have any (13) problems; is that correct?
- (14) A 93 percent of smokers do not have the (15) problems that are associated with smoking.
- (16) Q 93 percent of smokers do not have a problem from (17) smoking; is that what you are saying?
- (18) A Essentially.
- (19) Q They die of things, but they do not die of things (20) from smoking?
- (21) A Correct.
- (22) Q 7 percent of smokers actually die from smoking; (23) is that right?
- (24) A We are getting back to the cause equation (25) again and I will restate that if you would like,

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- (2) but it's in the record.
- (3) If you say die from smoking you are (4) attributing death to smoking and I reject that as (5) a cause because no one has ever actually caused (6) death from exposure to tobacco products.
- (7) It's oversimplification. We all know the (8) risk factors, everybody knows that.
- (9) Q That 7 percent of the smoking population you are (10) talking about, are you saying that--
- (11) A They develop the diseases that are (12) associated with smoking.
- (13) Q And if you took the rest of the population that (14) does not smoke, the rest of the population making

(15) them separate, nonsmokers, what percentage of (16) those people get those diseases?  
 (17) MR. MERRITT: By "those diseases" you (18) you mean what?  
 (19) MR. HOAG: Where he comes up with the (20) 7 percent figure.  
 (21) A That's too broad, that question. I cannot (22) answer that.  
 (23) If you will ask me a specific question that (24) is within my domain of information, I will try to (25) answer it.

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(2) Q How are you able to come up with the 7 percent (3) figure for smokers?  
 (4) A It's a published figure. It's in the (5) literature. It's the figure that has been used (6) for years.  
 (7) Q But it is not in the literature, the percentage (8) of the rest of the population that gets these (9) diseases?  
 (10) A I can't answer that question specifically.  
 (11) People who do not smoke have the same spectrum of (12) diseases that people have who do smoke.  
 (13) Q Kind of like people--  
 (14) MR. MERRITT: You are interrupting (15) him. Please let him finish.  
 (16) Were you finished with your answer?  
 (17) THE WITNESS: I don't know.  
 (18) MR. HOAG: He will tell you if you (19) are, if he does not like what you are (20) saying.  
 (21) MR. MERRITT: I will object, and we (22) will end the deposition if it is going to (23) turn into a commentary on my deposition (24) style.  
 (25) I am entitled to make objections. He

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(2) is not to be interrupted.  
 (3) MR. HOAG: You interrupted him a (4) moment ago.  
 (5) MR. MERRITT: Because there was no (6) question pending.  
 (7) MR. HOAG: There was.  
 (8) MR. MERRITT: I disagree.  
 (9) MR. HOAG: He was talking; he was (10) answering and you said not to.  
 (11) MR. MERRITT: Okay.  
 (12) MR. HOAG: So do not make threats (13) about discontinuing the deposition.  
 (14) MR. MERRITT: We are not going to have (15) it continue if it is going to be you (16) instructing him on my deposition style.  
 (17) I will make my objections and that is (18) the way it will be.  
 (19) MR. HOAG: You will not instruct him (20) not to answer any questions.  
 (21) MR. MERRITT: You--  
 (22) MR. HOAG: You said not to talk (23) anymore.  
 (24) MR. MERRITT: No, I did not.  
 (25) MR. HOAG: I sure heard you say that.

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(2) MR. MERRITT: I am glad you heard it.  
 (3) MR. HOAG: And he stopped talking too, (4) so if we want him to answer questions, that (5) is fine, but do not stop him from (6) answering.  
 (7) MR. MERRITT: I did not stop him.  
 (8) THE WITNESS: I did not interrupt it (9) that way. I am trying to be as cooperative (10) as I can, but you are asking me things that (11) are unanswerable.

(12) Q As to the issue of whether or not smoking causes (13) any disease, Doctor, do you consider that to be (14) unanswerable?  
 (15) A Yes, sir, because we have to discuss the (16) definition of cause and I have done this twice (17) now, I believe, but I will be happy to do it (18) again.  
 (19) Q I just wanted the answer to that one question and (20) you have answered it. You do not need to further (21) explain it; you have already answered, as you (22) said.  
 (23) MR. HOAG: I guess this is a good (24) place to take a break.  
 (25) (Whereupon, a brief recess was taken.)

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(2) MR. MERRITT: Let me clarify the (3) record, because what Dr. Glenn has (4) testified to is not actually accurate as (5) to prior depositions.  
 (6) There were two remotely conducted (7) depositions, only one of them was in the (8) Mississippi AG case.  
 (9) The other one was in a case that Mr.  
 (10) Wilner had in Jacksonville and then there (11) is--in addition there was also a very short (12) deposition that Dr. Glenn did not recall (13) that related to a jurisdictional motion in (14) an individual personal injury case in (15) Louisiana, which I think was the Guidry (16) case.  
 (17) MR. HOAG: Which one; which Wilner (18) case was it?  
 (19) MR. MERRITT: I do not know.  
 (20) MR. HOAG: There were several of (21) those.  
 (22) CONTINUED EXAMINATION (23) BY MR. HOAG:  
 (24) Q Doctor, I appreciate your clarification.  
 (25) Have you spoken about this outside with

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(2) your attorney?  
 (3) A He just reminded me about the other (4) deposition that I forget, but very brief.  
 (5) Q Did that refresh your recollection?  
 (6) A Correct.  
 (7) Q During the break did you talk about anything else (8) related to your deposition other than the (9) additional depositions that you have had?  
 (10) MR. MERRITT: His conversations with (11) me during the break are privileged and I (12) will instruct him not to answer that.  
 (13) Q Did you talk about anything related to your (14) testimony today?  
 (15) MR. MERRITT: Same instruction.  
 (16) MR. HOAG: You are instructing him not (17) to tell me if you talked to him about the (18) testimony during the break?  
 (19) MR. MERRITT: When he talks to me it (20) is subject to privilege.  
 (21) MR. HOAG: During the deposition you (22) are not supposed to be giving any advice or (23) coaching regarding his deposition testimony (24) while it is pending.  
 (25) MR. MERRITT: I am not saying I am.

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(2) The conversations are privileged.  
 (3) MR. HOAG: Those conversations would (4) not be.  
 (5) MR. MERRITT: You may want to know but (6) you are not going to know, because they are (7) privileged.

(8) MR. HOAG: I will not know if you have (9) instructed him how to answer questions (10) today.  
 (11) MR. MERRITT: You will not know what (12) we talked about when we conversed during (13) the break or at any other time.  
 (14) Q Did you talk about how to answer any questions (15) during the break?  
 (16) MR. MERRITT: Same instruction.  
 (17) MR. HOAG: What is that?  
 (18) MR. MERRITT: Not to answer.  
 (19) MR. HOAG: I will certify the (20) question.  
 (21) For your information you are not (22) allowed to tell him how to answer questions (23) during the pendency of a deposition. Do (24) you understand that?  
 (25) MR. MERRITT: I am not the witness.

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(2) MR. HOAG: You are the attorney. You (3) just told the witness he could not talk.  
 (4) MR. MERRITT: I did not say that.  
 (5) MR. HOAG: You told him not to answer.  
 (6) MR. MERRITT: I instructed him not to (7) answer questions regarding the substance of (8) conversations that he had with me because I (9) am his attorney and those conversations are (10) privileged.  
 (11) Now, I do not know how many times I (12) have to tell this to you. You should be (13) able to pick this up; you have been to law (14) school.  
 (15) It is privileged and he will not (16) answer questions about it.  
 (17) Q Without telling me what he said to you (18) specifically, did he give you any advice on how (19) to respond to questions regarding the deposition (20) in this last meeting?  
 (21) MR. MERRITT: Same instruction.  
 (22) Q Are you going to answer the question?  
 (23) MR. MERRITT: Same instruction.  
 (24) Q Are you going to answer?  
 (25) A My attorney tells me our conversation was

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(2) privileged and I should not answer it, such (3) questions.  
 (4) Q I am not asking you the specific conversation. I (5) am asking if he told you how to answer, how to (6) respond to questions during the time you had your (7) break.  
 (8) MR. MERRITT: Dr. Glenn, I will (9) instruct you not to answer these questions (10) as long as he persists in asking you about (11) our conversations.  
 (12) We are at an impasse now.  
 (13) MR. HOAG: I will certify the (14) question.  
 (15) You are taking the position that he (16) cannot even tell me whether you coached him (17) or not, which is really wrong. He can tell (18) me that.  
 (19) MR. MERRITT: I do not agree with you (20) there.  
 (21) MR. HOAG: Do you think it is (22) acceptable behavior for you to coach him on (23) how to answer question during the break?  
 (24) MR. MERRITT: I did not say it was.  
 (25) He does not have to answer questions on

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(2) conversations that he has with his lawyer.  
 (3) MR. HOAG: Do you have to tell me (4) whether you have coached him or not?  
 (5) MR. MERRITT: I do not have to tell (6) you anything about conversations I had with (7) my client.  
 (8) MR. HOAG: You are not supposed to (9) coach

him on how to answer questions during (10) the break.  
 (11) MR. MERRITT: I understand what my (12) obligations are.  
 (13) MR. HOAG: You understand that?  
 (14) MR. MERRITT: I understand my (15) obligations.  
 (16) MR. HOAG: I can ask him these (17) questions and he has to answer.  
 (18) MR. MERRITT: You cannot ask him (19) conversations with a lawyer. This is not (20) rocket science.  
 (21) MR. HOAG: I am surprised you do not (22) know the answer to this.  
 (23) MR. MERRITT: If I did not understand (24) I certainly have been instructed about it (25) by you, but the instruction remains the

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(2) same.  
 (3) MR. HOAG: I will instruct you to stop (4) coaching the witness during the breaks on (5) how to respond to questions.  
 (6) MR. MERRITT: I am not coaching the (7) witness on how to respond to questions.  
 (8) Q Has he coached you in any way on how to respond (9) to questions during the break?  
 (10) MR. MERRITT: I will instruct him not (11) to answer.  
 (12) You understand that when you have a (13) privileged conversation you cannot just (14) reveal a portion of it. You have to assert (15) the privilege as to the entire (16) conversation. Otherwise you are faced with (17) a waiver.  
 (18) MR. HOAG: I just said without asking (19) him the specifics of the conversation, I (20) just want to know if he was coached on how (21) to answer questions.  
 (22) Are you telling him not to answer?  
 (23) MR. MERRITT: The attorney-client (24) privilege does not apply to this specific (25) conversation?

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(2) MR. HOAG: I cannot find out whether (3) you are behaving ethically or not because (4) you are instructing him not to answer.  
 (5) MR. MERRITT: You have to assume I am (6) acting ethically.  
 (7) MR. HOAG: The fact you will not let (8) him answer makes me think he has been (9) coached.  
 (10) MR. MERRITT: That is a problem you (11) have to deal with.  
 (12) He is not testifying about privileged (13) conversations.  
 (14) MR. HOAG: A problem you have to deal (15) with if you coach him.  
 (16) Off the record.  
 (17) (Whereupon, there was a discussion (18) off the record.)  
 (19) MR. HOAG: I have certified those (20) questions relating to any conversations (21) that you have had regarding being coached, (22) so I will move on now.  
 (23) Q You talked about driving, a person driving an (24) automobile on a slippery pavement and getting in (25) an accident and the person gets a head injury,

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(2) for example, and I think you said the slippery (3) payment would not be the cause; is that right, (4) Doctor?  
 (5) MR. MERRITT: Objection to the form of (6) the question.

(7) Q Is that right?  
 (8) A Not exactly.  
 (9) Q Can you explain what you mean?  
 (10) A I am saying that the individual was (11) exposing himself to a risk factor. The risk (12) factor was not the cause of death. The cause of (13) death was--scientifically would be the injuries (14) incurred.  
 (15) Q The actual head injury, for example, if it was a (16) head injury?  
 (17) A For example.  
 (18) Q If someone died of lung cancer and they were a (19) smoker and they were a three-pack-a-day smoker (20) for 30 years, the cause of death, Doctor, if they (21) died the cause of their death would not be (22) smoking, it would be the lung cancer; is that (23) correct?  
 (24) A Correct.  
 (25) Q And that is the way you define cause?

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(2) A Correct.  
 (3) Q So using your definition, if a person drinks (4) let's say five shots of whiskey and then gets (5) into a car, drives and runs smack into a pole and (6) dies, the cause of that person's death is not (7) drinking the alcohol, it is smacking into the (8) pole; right?  
 (9) A No.  
 (10) Q What is the cause?  
 (11) A Whatever the injury was.  
 (12) Q Okay.  
 (13) The cause of the death. He smacks into the (14) pole after the five drinks and he has severe head (15) trauma and dies as a result, so based upon your (16) interpretation of cause, the cause of his death (17) is the severe head trauma; correct?  
 (18) A Simplistically, yes.  
 (19) Q The cause of death, Doctor, there is no causal (20) association between his drinking and his death; (21) correct?  
 (22) A Mr. Hoag, I have explained at least twice (23) the difference between scientific cause and the (24) lay interpretation of cause.  
 (25) I don't think I need to do that again.

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(2) Q Scientifically there is no relation between his (3) drinking and his death?  
 (4) A Mr. Hoag, I have explained the causation (5) interpretation twice and do not intend to do it (6) again.  
 (7) Q Why are you refusing to answer? It is very (8) simple.  
 (9) A It's not simple, because you are trying to (10) compound the issue of causation and I have (11) explained that previously. I cannot be any (12) clearer than what I have already said.  
 (13) Q This is a really simple question.  
 (14) Scientifically is there a causal (15) relationship between that person's drinking and (16) his death?  
 (17) A Are you familiar with a death certificate, (18) Mr. Hoag?  
 (19) MR. HOAG: I move to strike this (20) response because it is not responsive to my (21) question.  
 (22) A No, it's not, because as a physician I am (23) required to sign a death certificate and I am (24) required by law to put in the causative factor of (25) death and whether this patient had been a smoker

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(2) or nonsmoker, the cause of death may be coronary (3) artery disease.  
 (4) MR. HOAG: Again I will move to strike (5) as not responsive.  
 (6) Q My question was about a person who drinks five (7) shots of alcohol, gets into a car, slams into a (8) pole, has severe head trauma and dies.  
 (9) A I heard your question.  
 (10) Q Okay.  
 (11) So I said scientifically is there a causal (12) association between his drinking alcohol and his (13) death?  
 (14) A Socially, there is a definite relationship.  
 (15) Q I said scientifically, Doctor.  
 (16) A And he has a risk factor involved here or (17) two.  
 (18) Q He has a risk factor?  
 (19) A Or two.  
 (20) Q Scientifically you cannot say his death was (21) caused by drinking alcohol; correct?  
 (22) A If you accept the definition of causation (23) as we discussed previously.  
 (24) Because the man might have run into the (25) telephone pole whether or not he had been

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(2) drinking.  
 (3) Q And some people who drink five or ten shots do (4) not run into telephone poles?  
 (5) A That is true also.  
 (6) Q Therefore, you can never have a causal (7) association between drinking alcohol and dying in (8) a traffic accident; correct?  
 (9) A You are coming back to the definition of (10) causation again.  
 (11) Q Yes.  
 (12) A That is what I am trying to explain. I (13) don't know how I can be any clearer than I have (14) been.  
 (15) Q If you can just answer my question, Doctor?  
 (16) A I can't answer your question because I (17) don't know what definition of causation you are (18) using.  
 (19) Q It is you that is testifying; we are using your (20) definition of causation now.  
 (21) MR. MERRITT: The witness has already (22) testified there are two definitions of (23) causation.  
 (24) Which one do you want him to use?  
 (25) MR. HOAG: I am glad you were not

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(2) going to interrupt this deposition and let (3) me ask the questions.  
 (4) MR. MERRITT: I am trying, but--  
 (5) MR. HOAG: But what? You felt you (6) needed to make this special statement?  
 (7) That is really trying to like answer the (8) question for him. I do not get it.  
 (9) MR. MERRITT: I do not think he needs (10) the question answered for him.  
 (11) MR. HOAG: Could you read back my last (12) question?  
 (13) It was pretty simple.  
 (14) (Whereupon, the record was read (15) by the reporter.)  
 (16) A The question is not as simple as you put it (17) and I have answered the question about causation (18) at least twice now and I don't think I can be any (19) clearer than I have been in the past.  
 (20) Q In your opinion can you ever scientifically prove

(21) a causal association between drinking alcohol and  
(22) having a traffic accident?  
(23) A I think anyone could make a common sense (24)  
inference that alcohol in the circumstance you (25)  
described was a risk factor.

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(2) The patient had another risk factor, which (3) was  
the telephone pole. The actual cause of (4) death was  
massive head injury, according to your (5) narrative.  
(6) Alcohol may certainly have been a factor, (7) but  
to say that alcohol caused the death is a (8) misnomer.  
The patient did not die of alcoholism; (9) the patient  
died of head injuries.

(10) How can I be any clearer than that?

(11) Q So would it make sense then if let's say 10,000  
(12) people who drink, who drink five shots of alcohol  
(13) each year, 10,000 people who drink five shots of  
(14) alcohol slam into telephone poles and die from (15)  
head injuries, would it make sense then to find (16) out  
if they have a genetic predisposition toward (17)  
slamming into telephone poles before you can know (18)  
whether or not the alcohol caused the death, (19)  
Doctor?

(20) MR. MERRITT: Objection to the form of (21) the  
question.

(22) A It would be much more productive to see if (23)  
they have genetic predisposition to alcoholism.

(24) Q Towards doing the thing that ultimately resulted  
(25) in their death?

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(2) A No, sir, I did not say that.

(3) Q Would it make sense to find out if people have  
a (4) genetic predisposition to smoking cigarettes, (5)  
Doctor?

(6) A Yes.

(7) MR. MERRITT: Objection to the form.

(8) A And I think that is exactly the direction (9) that  
research is taking, but more importantly (10) would be  
to determine if they have a genetic (11) predisposition  
to the diseases that are (12) associated with tobacco use.  
(13) And that is what we tried to do. The whole (14)  
purpose of the Council for Tobacco Research has (15)  
been very generously supported by the industry (16) for  
40 years.

(17) Q So the Council does not look at whether or not  
(18) there is a genetic predisposition to smoking (19)  
cigarettes; correct?

(20) A I did not say that.

(21) Q What research has the Council on Tobacco  
Research (22) funded to find out whether there is a  
genetic (23) predisposition for people to smoke  
cigarettes, (24) Doctor?

(25) A You have the annual reports; you can find

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(2) that out readily.

(3) Q Do you know the answer?

(4) A Yes.

(5) Q Has there been research done?

(6) A Research has been done on factors that are (7)  
associated with smoking.

(8) Q Genetic predisposition to smoking cigarettes, (9)  
Doctor?

(10) A Not genetic.

(11) How would you structure such a research (12)  
project?

(13) Q How would you structure one?

(14) A I could not. How would you do it?

(15) Q Do you think it is possible to structure a (16)  
research project like that?

(17) A No.

(18) Q To find out if people have a genetic (19)  
predisposition?

(20) A Not with our current state of knowledge, (21) no.

(22) Q So you cannot find out if people have a genetic  
(23) predisposition to smoking; you cannot find that (24)  
out?

(25) A I think-you know, I never say never, but

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(2) at the current state of our knowledge of (3)  
genetics, I am not sure that such a project is (4)  
feasible.

(5) Q If you can find the gene that causes people to  
be (6) predisposed--

(7) A If there is one. You're presuming there is (8)  
one and I cannot accept that premise.

(9) Q The CTR has never funded research to see if  
there (10) is one?

(11) A They have funded applications for research (12)  
based upon what the investigator believes they (13) can  
accomplish reasonably.

(14) We never had an application to look for a (15)  
smoking gene and I don't think it would be (16) feasible  
at our current state of knowledge.

(17) I have stated that three times now.

(18) Q Let's just say hypothetically there is such a (19)  
thing as a smoking gene.

(20) A Let's do not say that hypothetically (21) because  
we have absolutely no evidence that that (22) is the  
case.

(23) Q You have lots and lots of evidence, though, that  
(24) smoking causes numerous diseases and hundreds and  
(25) thousands of deaths.

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(2) A No.

(3) Q You do not have that evidence either?

(4) A Let's go back to the definition of cause.

(5) Then we-and you can ask her to read it back.

(6) Q If you do not want to answer the question other  
(7) than saying go back to the previous answer, I (8)  
will settle for that answer to my question.

(9) If people did not smoke cigarettes they (10) would  
be far less likely to contract lung cancer; (11) would  
they not?

(12) A We do not know that.

(13) Q Who does not know that?

(14) A I don't think anybody knows that.

(15) I think lung cancer would be with us if (16) there  
were no tobacco products.

(17) Q At the same numbers there are today?

(18) A It is highly likely that we would see lung (19)  
cancer and other cancers continue if there were (20) no  
other risk factors.

(21) Suppose people did not live in smoke laden (22)  
environments, not exposed to radon. We would (23)  
eradicate lung cancer? I doubt it.

(24) Q My question was not about total eradication. It  
(25) was about decreasing, significantly decreasing

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(2) the number of people who contract lung cancer so  
(3) that it is much, much fewer people that contract  
(4) lung cancer.

(3) My question is this: Isn't it true that if (6) no one smoked cigarettes there would be far fewer (7) people who contracted lung cancer?  
 (8) A I don't know that. I don't know that and I (9) don't know of any evidence that would lead us in (10) one direction or not.  
 (11) There is one certain thing: The end point (12) of the life experience is death and people, all (13) people, are going to die and they are going to (14) die of some cause, some disease process.  
 (15) Q The guy who has five glasses of whiskey, gets (16) into his automobile and slams into the pole, he (17) is going to die some day whether he drinks five (18) shots of alcohol or not; correct?  
 (19) A Yes.  
 (20) Q He is more likely to die sooner if he gets into (21) his car after he has had five shots of alcohol; (22) correct?  
 (23) A I don't know that. You have to interpose (24) there is a second risk factor, which is the (25) telephone pole.

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(2) Q I guess dropping the glass like I did gets my (3) mind in a different direction, at least for the (4) moment.  
 (5) I would like to ask you this: Other than (6) the one piece of research or maybe it was (7) lengthy, a couple of years of research at Duke, (8) that related to nicotine that was funded by the (9) tobacco industry through the AMA, was there any (10) other research that you ever did or ever were (11) associated with prior to working for the CTR that (12) was funded by the tobacco industry in part, even (13) in part, by the tobacco industry?  
 (14) A Mr. Hoag, I was dean of Emory University (15) Medical School and president of Mt. Sinai Medical (16) Center and in both of those institutions I was (17) the responsible administrative authority and I (18) cannot cite specific grants in those institutions (19) from the CTR or any other tobacco related source, (20) but I am sure that there were investigators in (21) both institutions during any administrative (22) tenure.  
 (23) Q I understand your answer.  
 (24) So your answer is you do not have any (25) specific recollection of any specific research.

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(2) but there probably was something?  
 (3) A Yes.  
 (4) Q How long have you been associated with the (5) Council for Tobacco Research?  
 (6) A About ten years.  
 (7) Q How did you first become involved with the (8) Council for Tobacco Research?  
 (9) A I was invited to join the scientific (10) advisory board.  
 (11) Q Who invited you?  
 (12) A Dr. Sheldon C. Sommers, who was then the (13) scientific director.  
 (14) Q How did you know him?  
 (15) A Dr. Sommers is a pathologist and had been (16) the chairman of the pathology department at Lenox (17) Hill Hospital and I knew him in a professional (18) relationship.  
 (19) Q How long were you on the scientific advisory (20) board for the CTR before changing positions, (21) Doctor?  
 (22) A I was on the scientific advisory board from (23)

1987 to 1991.

(24) Again, I would refer you to my CV because (25) it has all of these dates and facts adequately

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(2) enumerated.  
 (3) Q What was your position, Doctor, other than on the (4) advisory board? What was your full-time position (5) at that time, from 1987 to 1991?  
 (6) A I--during that interval I was the (7) scientific director.  
 (8) Q That was that 1987 to 1991 time frame?  
 (9) A Yes; correct.  
 (10) Q Was that a full-time job, Doctor, scientific (11) director?  
 (12) A It was--I think you would have to say (13) part-time. I spent some time at the University (14) of Kentucky Medical Center.  
 (15) Q What was your job at the University of Kentucky (16) Medical Center during that time?  
 (17) A Various responsibilities.  
 (18) I am a surgeon. At the request of the (19) University administration I was the acting (20) director of the cancer center for three and a (21) half years while they searched for a permanent (22) director.  
 (23) That also is in the CV, which is available (24) to you, and then I served a year and a half as (25) chief of staff of the University Hospital as they

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(2) sought a new chief of staff.  
 (3) I was associate dean for a time; most (4) recently was the acting chairman of the (5) department of surgery during a search for a new (6) chairman.  
 (7) Q Did you receive a salary during that time?  
 (8) A Yes.  
 (9) Q What was your yearly salary at that time?  
 (10) A I don't think that is relevant and I don't (11) intend to answer questions like that.  
 (12) MR. HOAG: We will certify that (13) question.  
 (14) Q When you became scientific director for the CTR (15) what was your annual salary for that?  
 (16) A I don't intend to answer. That is not (17) relevant.  
 (18) MR. MERRITT: Is there any real (19) relevance to that other than just to cause (20) him personal embarrassment?  
 (21) MR. HOAG: We will certify the (22) question.  
 (23) Of course there is. How much he is (24) compensated by the tobacco industry funds (25) is certainly relevant to this case.

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(2) Q So you are refusing to tell me how much the (3) tobacco industry pays the CTR, Doctor, which pays (4) you?  
 (5) A I have other income besides that salary.  
 (6) Q I am asking you--  
 (7) A I know what you're asking.  
 (8) Q And?  
 (9) A I think that is a personal matter. I don't (10) think it's relevant to what we are discussing (11) here today.  
 (12) Q **REDACTED**  
 (13)

(16) A it was accurate at the time.

(17) Q At the time in 1993, correct? Is that correct,  
(18) sir?  
(19) A Correct.  
(20) Q Do you make more or less than \$250,000 now,  
(21) Doctor?  
(22) A I don't intend to answer questions about my (23)  
personal income.  
(24) Q Even working for the Council for Tobacco (25)  
Research; is that correct?

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(2) A Correct.  
(3) Q Do you understand what this lawsuit is about?  
(4) A I think I do.  
(5) Q What is the lawsuit about?  
(6) A I believe you represent Engle and others in (7)  
a class action suit relative to smoking and (8) possible  
detrimental effects of smoking.  
(9) Q And you realize that the CTR is a defendant in  
(10) this lawsuit?  
(11) A Yes.  
(12) Q And you know you are a full-time employee of  
the (13) CTR; is that correct?  
(14) A Not full-time, no.  
(15) Q What is your current job?  
(16) A It's chairman of the board, president and (17)  
chief executive officer.  
(18) Q Which is a part-time job?  
(19) A I am here part of my time.  
(20) Q How many days a week?  
(21) A I don't think that is relevant either.  
(22) MR. MERRITT: Mr. Hoag, can we just--  
(23) MR. HOAG: Can we list him as a fact (24) witness?  
(25) MR. MERRITT: Can we take a short

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(2) break?  
(3) MR. HOAG: Yes.  
(4) (Whereupon, a brief recess was taken.)  
(5) MR. MERRITT: Mr. Hoag, Dr. Glenn and (6) I  
have had a conversation and to save you (7) even  
asking, I will not tell you what we (8) said but I will  
encourage Dr. Glenn to (9) answer questions relating to  
his (10) compensation by the tobacco industry.  
(11) I think you can understand that this (12) is an area  
involving some degree of (13) personal privacy and I  
will take your (14) representation that the only reason  
you are (15) inquiring is because you think it is (16)  
relevant to his bias or whatever in this (17) case, so I  
will ask him to provide you with (18) that information.  
(19) MR. HOAG: It is a question we ask (20) every  
witness, every witness who works for (21) the tobacco  
industry or gets paid by the (22) tobacco industry.  
(23) We ask them all of these questions.  
(24) There is nothing personal to you as an (25)  
individual, sir; it is just a common

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(2) question we ask across the board about (3)  
income.

(4) O

(5) A

(6) Q

(7) A

(8) Q

(9) A

(10) Q

(11) A

(12) A  
(13)**REDACTED**

(14) A

(15) Q

(16)

(17) A

(18) Q

(19)

**REDACTED**

(24) A That's approximately correct.

(25) Q How many days per week do you spend working  
for

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(2) the CTR?

(3) A In New York two or three days a week, but I

(4) work for the CTR universally. I am available for

(5) telephone conferences, for administrative actions (6)  
at any time.(7) Q What days per week are you usually in New  
York, (8) sir?

(9) A Tuesdays, Wednesdays, Thursdays.

(10) Q And the CTR headquarters are in New York City;

(11) correct?

(12) A Correct.

(13) Q Does the CTR have any other offices other than  
in (14) New York City?

(15) A No.

(16) Q To your knowledge have they ever had any  
other (17) offices other than in New York City?

(18) A To my knowledge they have not.

(19) Q How large is the staff at the CTR?

(20) A Twelve people at present.

(21) Q Is that less than it was a year ago or more or  
(22) the same?

(23) A It's less. We have had some retirements.

(24) Q

**REDACTED**

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(2) Doctor?

(3) That would include income compensation, (4)  
benefits, stock options, health care, anything (5) that  
you receive that would have a monetary (6) benefit to  
you.(7) A All of our employees are covered by a (8)  
health plan and all of our employees participate (9) in  
a pension retirement plan and all of our (10) employees  
receive term life insurance coverage.

(11) Q Anything else?

(12) A I think that's all.

(13) Q The pension retirement plan, do you make any

(14) contribution to that or is that all paid by the (15)  
CTR?

(16) A Paid by the sponsor.

(17) Q What is the retirement plan contribution paid by  
(18) the sponsor?

(19) A To my personal retirement?

(20) Q Yes.

(21) A

(22) O

**REDACTED**

(24) A

(25)

**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**

(16) A  
(17) O

**REDACTED**

(19) A  
(20)

(25)

(25) Q

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(2)

**REDACTED**

(3)

(4)

(5)

(6)

**REDACTED**

(7) Q What percentage of Kentucky's-how do I word  
(8) this-of Kentucky's overall income generated for (9)  
the people in Kentucky is from tobacco, if you (10)  
know?

(11) A I can't tell you the percentage, but it is (12) the  
leading cash crop by far.

(13) Q So if the CTR-funded research resulted in the (14)  
development of an alternative to tobacco, that (15) could  
have severe economic consequences on the (16) state of  
Kentucky; correct?

(17) MR. MERRITT: Objection to the form of (18) the  
question.

(19) A No, because you are supposing that the (20)  
Council for Tobacco Research is into agricultural (21)  
research and that is not the case.

(22) We are-we support biomedical research, not (23)  
agricultural research.

(24) Q Would a safer cigarette have health consequences  
(25) for the American public in your opinion?

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(2) MR. MERRITT: Objection.

(3) A What is safer cigarette?

(4) Q Do you have any idea as to what is a safer (5)  
cigarette?

(6) A I really don't.

(7) Q Do you know if it is possible to have one?

(8) A I know the manufacturers have pursued this (9)  
sort of research.

(10) Again, this is totally out of the CTR; we (11) are  
not involved in the issues relative to the (12)  
manufacture, sale or promotion of cigarettes.

(13) Q Has the CTR ever funded any research related to  
(14) the development of safer cigarettes?

(15) A No. We are not into manufacturing or (16)  
agricultural research. We do-we support basic (17)  
biomedical investigations.

(18) Q Have they ever funded any research regarding  
the (19) analysis of the components of tobacco?

(20) A I think historically they probably have (21) been  
involved, but again, that sort of research (22) has been  
done largely by the companies.

(23) The CTR funds biomedical investigations and (24)  
you're asking me about agriculture and (25)  
manufacturing questions, but the CTR has in years

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(2) past historically and before my time supported (3)  
some investigation that would tend to identify (4)  
components of cigarette smoke and as you know, we (5)  
still isolate nicotine as one component of (6) cigarette

**REDACTED**

smoke and we are supporting research on (7) nicotine as it relates to the central nervous (8) system.

(9) Q Do the tobacco companies ever do biomedical (10) research?

(11) A I don't know.

(12) Q Do they ever fund biomedical research?

(13) A I think they have. I don't know if they (14) are doing it currently or not.

(15) R.J. Reynolds Company supported some (16) investigators in areas of immunology. I think (17) they had a very well defined program in years (18) past.

(19) Q Okay.

(20) A But I am not familiar with it. I have no (21) first-hand experience with it.

(22) Q So the Council on Tobacco Research is not (23) precluded from funding the type of research that (24) is also done by the tobacco industry itself; is (25) that correct?

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(2) A No, we are not precluded from supporting (3) anything that our scientific advisory board (4) thinks is appropriate and worth pursuing.

(5) The companies have not dictated any (6) policies regarding our activities.

(7) Q Is the concept of the development of a safer (8) cigarette worth pursuing?

(9) A I don't know that.

(10) Q You do not know?

(11) A One way or the other; it's not in my area (12) of expertise or the CTR's area of interest.

(13) Q So that just has not been an area of interest for (14) the Council for Tobacco Research?

(15) A We never had a grant application in that (16) area.

(17) Q Have you ever encouraged grant applications in (18) that area?

(19) A No.

(20) Q Have they ever encouraged grant applications in (21) any area?

(22) A No, we have not.

(23) The applicants themselves determine the (24) direction that the biomedical research has taken.

(25) Q Does CTR ever discourage applications in any

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(2) area?

(3) A No, sir.

(4) Well, as I said earlier, if we receive a (5) preliminary request from somebody who wants to (6) study orthopedic abnormalities, we probably would (7) discourage that because that is not fundamental (8) biomedical research and will not shed any light (9) on the diseases that have been associated with (10) smoking.

(11) Q Is it part of the Council for Tobacco Research's (12) role to discourage people from smoking (13) cigarettes?

(14) A No.

(15) Q Is it part of the Council for Tobacco Research's (16) role to encourage people to smoke cigarettes, (17) Doctor?

(18) A No.

(19) Q Does the Council take any position on whether or (20) not people should or should not smoke cigarettes, (21) sir?

(22) A No.

(23) Q In your prior deposition in 1993 you said that (24) you were offered a position at one time in the (25)

Public Health Agency. I forget what the name

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(2) was, but it is prominent.

(3) A American Cancer Society.

(4) Q That was about the same time you were offered a (5) position with the CTR?

(6) A Yes.

(7) Q You said the reason—I believe you said in your (8) deposition the reason, at least part of the (9) reason you did not accept that position was (10) because of the pay?

(11) A It was really a complex decision.

(12) The other candidate for the job of medical (13) director of the American Cancer Society happened (14) to be a very close friend of mine, Dr. Gerald (15) Murphy, former director of Roswell Park Memorial (16) Cancer Research Institute, and when I found out (17) that Dr. Murphy was the other candidate I (18) withdrew.

(19) Q Was it—

(20) A There were other factors in the decision.

(21) American Cancer Society was based here in (22) New York at that time, but they were talking (23) about moving their headquarters to Atlanta and I (24) have been to Atlanta and I did not particularly (25) want to go back.

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(2) Q What was the starting salary for that position, (3) Doctor?

(4) A I forgot.

(5) Q It was less than the starting position for the (6) CTR?

(7) A I don't think so.

(8) Q I can probably find the part in the deposition.

(9) Maybe I am confused about what you said.

(10) You do not remember one way or the other (11) right now?

(12) A I really don't, but the salary was not a (13) big issue with me.

(14) Q Has the American Cancer Society taken a position (15) on whether to discourage or encourage people from (16) smoking cigarettes?

(17) A Yes.

(18) Q What is their position?

(19) A Smoking is harmful is their position and (20) that they are officially opposed to smoking.

(21) And I think a more extreme position is that (22) the manufacture and sale of cigarettes should be (23) banned.

(24) Q Was the—

(25) A I don't believe that the American Cancer

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(2) Society ever made it public policy that cigarette (3) companies should be eliminated.

(4) Q The public position of the public health agencies (5) like the American Cancer Society—

(6) A It's not a public health agency. It's a (7) private foundation.

(8) Q The public health nonprofit organization, however (9) you want to word it.

(10) A They are not public health agencies.

(11) Q Basically, regardless of whether you and I (12) disagree on the public—

(13) A The American Cancer, American Lung, (14) American Heart are all private foundations and (15) they

support biomedical research and their (16) interest and focus is on the named disease (17) process, but they are not public health agencies, (18) anymore than we are a public health agency.

(19) Q Ten years ago did the American Cancer Society (20) have a position of discouraging people from (21) smoking?

(22) A Oh, yes, and they have for a long time.

(23) Q Was one of the reasons that you decided not to (24) consider accepting a position with the American (25) Cancer Society because they publically had a

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(2) position of discouraging people to smoke (3) cigarettes?

(4) A That had nothing to do with it. I (5) understand the position of the American Cancer (6) Society; I support the American Cancer Society.

(7) It had absolutely nothing to do with my (8) decision.

(9) Q You support the decision of the American Cancer (10) Society to discourage people to smoke cigarettes, (11) Doctor?

(12) A All physicians understand the risk factors (13) involved with smoking and I am no different from (14) the rest of my colleagues.

(15) Q So does that mean you do support the position of (16) the American Cancer Society to discourage people (17) from smoking cigarettes?

(18) A Those are your words.

(19) I support the position of the American (20) Cancer Society in health issues and I did not (21) participate in making the policies for them; I am (22) not an agent of the American Cancer Society nor (23) am I an advocate for smoking.

(24) Q Do you agree with the position of the American (25) Cancer Society that individuals should be

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(2) discouraged from smoking cigarettes?

(3) A That is their position and I support the (4) American Cancer Society.

(5) Q Do you agree with the position?

(6) A I agree with it within certain limits.

(7) I think smoking is a personal decision, (8) it's a very personal matter. I feel the same way (9) about other risk factors in life, which include (10) the alcoholism that you used in your analogy.

(11) It includes other risk factors also. I (12) think riding motorcycles is a bad thing to do (13) too.

(14) Q What limit would you place on discouraging people (15) to smoke cigarettes?

(16) A I think it's a individual decision. It's (17) not something that should be legislated.

(18) Q Do you think advertisements ever encourage people (19) to smoke cigarettes?

(20) A Advertisement of any product is for the (21) purpose of selling that product.

(22) Q Do you believe that cigarette advertisements ever (23) encourage people to start smoking who have not (24) already started?

(25) A I don't know. I am not a marketer and I

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(2) have little or no expertise. I have not thought (3) about that subject. That is not within my area (4) of expertise.

(5) Q Part of the mission of the Council for Tobacco (6) Research is to look at health consequences of (7)

tobacco; correct?

(8) A Correct; and we have done that.

(9) Q In a very broad sense is what you are saying; (10) correct?

(11) A Broad and specific. We supported the (12) research that led to the identification of low (13) birth weight babies in smoking mothers.

(14) If you will refer to the annual reports (15) from year to year you will find there are (16) hundreds of papers that deal with the adverse (17) effects or risk factors of smoking.

(18) The Council has been very cosmopolitan in (19) their research, whether it's favorable to the (20) industry or unfavorable.

(21) Q Has the Council ever supported any research to (22) find out the extent to which cigarette (23) advertising causes people to begin to smoke (24) cigarettes?

(25) A That is not biomedical research; no.

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(2) Q Is that health research?

(3) A I don't think so. That is marketing (4) research, I think.

(5) Q Would that have an impact, would the number of (6) smokers have an impact on health?

(7) A I can't answer that question. I don't (8) know. All of us are going to die.

(9) Q-You talked about Roswell Park. Do you know Dr.

(10) Cummings?

(11) A Yes, I know who he is.

(12) Q He works there?

(13) A Yes.

(14) Q I was just down there a week ago in Buffalo.

(15) Have you ever been there?

(16) A Yes.

(17) Q They take a very strong position discouraging (18) smoking of cigarettes.

(19) A Yes.

(20) Q Dr. Cummings did some research regarding the (21) attitude of people who receive the CTR funding.

(22) Are you familiar with that?

(23) A Yes.

(24) I would not call it research. He did a (25) very biased survey.

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(2) Q There is such a thing as survey research; (3) correct?

(4) A Well, to call Dr. Cummings' work research (5) is to really stretch the limits of one's (6) imagination.

(7) Dr. Cummings had a preconceived notion and (8) gathered enough survey information to support his (9) bias.

(10) Q Have you or the CTR funded any surveys to counter (11) the findings that Dr. Cummings made?

(12) A No, sir, because that is not biomedical (13) research.

(14) Q Does the CTR ever fund anything other than (15) biomedical research?

(16) A No.

(17) Oh, I beg your pardon; we do. We support (18) 30 young investigators around the country, (19) so-called the CTR scholars, and that support is (20) in the amount of \$50,000 a year for three years.

(21) We try to-with the help of the deans of (22) the various medical schools-try to identify (23) young

investigators with promise and then offer (24) them the degree of support which cannot be used for (25) their salary, but can be used for equipment.

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(2) supplies, other expenses of their research (3) project.  
(4) In addition to that--and that constitutes (5) 30 times \$50,000 or a million and a half dollars (6) a year of our research budget.  
(7) And the other thing that we support are (8) various medical meetings, particularly when they (9) relate to issues of smoking and health.  
(10) These are meetings of the Federation of (11) American Societies of Experimental Biology, (12) FASEB, and other independent conferences.  
(13) The total extent of that support in a given (14) year would be up to \$50,000. We would support a (15) given program for as much as up to \$2,000 each to (16) help defray the cost of the conference.  
(17) We have also on limited occasions supported (18) major conferences. We contributed \$50,000 to the (19) New York Academy of Science for a major (20) conference on the central nervous system relating (21) to nicotinic receptors.  
(22) Q Has the Council for Tobacco Research ever (23) provided funding to a person named Sterling, (24) Theodore Sterling?  
(25) A Yes, sir.

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(2) Q That name is familiar to you?  
(3) A It's familiar, but I have had no personal (4) involvement with Dr. Sterling's projects.  
(5) He has studied a variety of matters (6) including environment smoke, but I am not (7) familiar--and his work was done, I think most of (8) it, was completed by the time I joined the CTR.  
(9) Q One of his publications is called "Indirect (10) Health Effects of Relative Humidity in Indoor (11) Environment."  
(12) Did the CTR fund any part of that?  
(13) A Yes. I think Dr. Sterling had a special (14) project dealing with environmental conditions.  
(15) Q What did indirect health effects of relative (16) humidity have to do with the Council for Tobacco (17) Research's mission?  
(18) A I cannot defend that; I was not there when (19) this decision was made and I don't know the (20) factors surrounding it, but clearly it relates to (21) the question of environmental tobacco smoke as (22) well as to humidity.  
(23) Q Doesn't it strike you as kind of strange that the (24) CTR would fund research about the health effects (25) of relative humidity in indoor environments but

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(2) would not fund research for the development of a (3) safer cigarette?  
(4) MR. MERRITT: Objection as to the (5) form.  
(6) A I don't have any opinion on that because I (7) am not involved in any safer cigarette project, (8) as you put it.  
(9) Q You do not believe that a safer cigarette would (10) have anything to do with the mission of the (11) Council for Tobacco Research; right?  
(12) A We are not in the business of (13) manufacturing, selling, promoting, advertising (14) cigarettes and what you're talking about is a (15) manufacturing issue and we

are certainly not (16) involved with that.

(17) Q Do you consider--  
(18) A We are looking at the fundamental disease (19) process, as I have explained exhaustively I (20) think.  
(21) Q One of those fundamental disease processes is (22) health effects of relative humidity--  
(23) A Oh, I believe you're familiar with a trial (24) by airline attendants who are claiming that (25) environmental smoke may be causing problems.

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(2) Well, environmental humidity in an airplane (3) is a major problem for respiratory diseases.  
(4) I don't find that particularly strange.  
(5) Q So that would be useful then?  
(6) A Fundamental biomedical information.  
(7) Q It does not have anything to do with tobacco effects (8) though?  
(9) A Not necessarily. It may relate to that.  
(10) Q It might help the tobacco industry in defending (11) itself against lawsuits.  
(12) A I don't know about that.  
(13) Q You just named one; did not you?  
(14) A Named one what?  
(15) Q You said there is a lawsuit against flight (16) attendants--  
(17) A Not against them.  
(18) Q A lawsuit where flight attendants are claiming (19) that tobacco caused them to get illnesses; is (20) that right?  
(21) A As I understand it.  
(22) Q And they are suing the tobacco companies?  
(23) A Yes.  
(24) Q And they are suing the CTR too?  
(25) A Yes.

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(2) Q That could be used to defend the tobacco (3) industry (3) against health consequences of tobacco by looking (4) at things other than tobacco; right?  
(5) A I don't know whether it can or cannot.  
(6) It's a little--well, I don't know how one would (7) use that information. It is fundamental (8) biomedical information and I think that that is (9) legitimate.  
(10) Q You just brought it up as something that relates (11) to the lawsuit brought by the flight attendants; (12) correct?  
(13) A It relates--  
(14) MR. MERRITT: What is your question?  
(15) Q Didn't you bring it up, Doctor, that it is (16) something that relates to the lawsuit that the (17) flight attendants have against the tobacco (18) industry and the CTR?  
(19) A A factor to be considered in any illness, (20) anyone who has taken a lengthy airplane trip can (21) attribute it to many factors, a problem that (22) might develop.  
(23) Q Factors other than tobacco?  
(24) A Sure.  
(25) Q And this research was about factors other than

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(2) tobacco?  
(3) A Sure.  
(4) Q So this research did not have anything to do with (5) health research?  
(6) A Fundamental biomedical information and that (7) is what we are about.

(8) Q So your note about helping the tobacco industry  
(9) to develop defenses for lawsuits--  
(10) A No, sir.  
(11) MR. HOAG: This would be a good time (12) to  
take a brief lunch break.  
(13) MR. MERRITT: Let's make it an hour.  
(14) MR. HOAG: I could go a few more (15) minutes.  
(16) MR. MERRITT: No; quarter to 2:00, one (17) hour.  
Okay?  
(18) MR. HOAG: Fine.  
(19) (Whereupon, a luncheon recess was (20) taken from  
12:45 to 1:45 P.M.)  
(21) CONTINUED EXAMINATION (22) BY MR. HOAG:  
(23) Q We are back from our lunch break.  
(24) Let me go back to something I did not (25) finish,  
which was the circumstances in which

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(2) which you were hired to become the chief (3)  
executive officer, Doctor.  
(4) A Yes.  
(5) Q You have been the chief executive officer since  
(6) 1987?  
(7) A No; '91.  
(8) Q You probably told me that already.  
(9) Prior to that you held another position; (10)  
correct?  
(11) A Scientific director.  
(12) Q What year did you get that position?  
(13) A 1988.  
(14) Q What was the process that you went through to  
(15) become hired as scientific director?  
(16) A Well, I was on the scientific advisory (17) board  
and Dr. Sommers, the scientific director at (18) that  
time, wanted to retire and he began to (19) involve me  
in the activities of his office and at (20) his retirement  
the then chairman of the board, (21) who was Mr.  
William Hobbs, asked me to take that (22) position.  
(23) He did that with the concurrence of the (24) board  
of directors of the Council for Tobacco (25) Research.

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(2) Q Who at that time comprised the board of (3)  
directors?  
(4) A There were ten. Mr. Hobbs was the chairman  
(5) and ten others, two from each of the then five (6)  
major tobacco companies.  
(7) Q Did each of the CEO's from each tobacco  
company (8) have a seat as a director?  
(9) A Yes.  
(10) Q Plus one additional person who represented the  
(11) tobacco companies?  
(12) A Yes.  
(13) Q Okay.  
(14) A And they varied. Some were the chief (15)  
financial officers, some were in-house counsel, (16) some  
were directors of some research.  
(17) Q That is the ten people that are the board of (18)  
directors and William Hobbs?  
(19) A Yes.  
(20) Q He was the chief executive officer of the CTR  
and (21) he basically--well, I will not say he basically,  
(22) so I will ask you what was the board of directors  
(23) role in relation to him, to William Hobbs?  
(24) A Mr. Hobbs was the chairman of the board of (25)  
directors.

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(2) Q How was he selected as chairman?  
(3) A I have no idea. I was not there at the (4)  
time.  
(5) Q Did the board of directors select him?  
(6) A Yes.  
(7) Q The way the CEO gets selected, Doctor, is the  
(8) board of directors votes on that?  
(9) A Yes.  
(10) Q Is it a simple majority or does it take more than  
(11) that?  
(12) A I can't tell you. In my case it was a (13)  
unanimous decision.  
(14) Q You do not know if unanimity is required; you  
are (15) pretty sure for your selection it was unanimous,  
(16) Doctor?  
(17) A Yes.  
(18) Q Did the board of directors talk to you, interview  
(19) you in any way prior to your selection as CEO, (20)  
Dr. Glenn?  
(21) A Yes.  
(22) Q How did that occur?  
(23) A It occurred in one of our semiannual (24)  
business meetings, general conversation, did I (25) want  
the job and then two members of the board of

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(2) directors were designated as the employment team  
(3) and we hammered out the terms of the agreement,  
(4) salary, fringe benefits.  
(5) Q We are talking about 1991 when you were  
selected (6) as CEO?  
(7) A Yes.  
(8) Q When you were selected as scientific director in  
(9) 1987 did the board of directors make that (10)  
decision too?  
(11) A I met with them and had general discussions (12)  
about missions and functions of the CTR, whether (13) I  
had any questions of them and my principle (14)  
concerns then were that the scientific board (15)  
function independently and sponsor companies have (16)  
been extremely supportive and cooperative.  
(17) Q The CEO at the time, who was Dr. Sommers--  
(18) A No; Mr. William Hobbs was the chairman of (19)  
the board and chief executive officer.  
(20) Q In 1988?  
(21) A Yes.  
(22) Dr. Sommers had been the scientific (23) director  
and in '88 he turned it over to me. I (24) continued  
to serve on the scientific advisory (25) board.

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(2) In 1991 Mr. Hobbs wished to retire. The (3)  
board of directors solicited interest from a (4) variety  
of people; the retiring president of (5) Rockefeller  
University, a distinguished Boston (6) scientist.  
(7) Mr. Hobbs personally asked me to submit my (8)  
letter of interest, which I did. There were two (9)  
other people at the CTR at that time who had a (10)  
strong interest and lobbied strongly for the job (11) and  
the directors met privately and decided to (12) extend  
the invitation to me and I met with them, (13) answered  
their questions and two members of the (14) board met  
with me to define employment.  
(15) Q What you just said now is about the CEO  
position (16) or the scientific director position?  
(17) A CEO, what I just said now, in 1991.  
(18) Q I just wanted to make sure I understood.  
(19) Going back to the scientific director (20) position

that you began in 1988, was the hiring (21) procedure similar to the hiring procedure as CEO, (22) Doctor?

(23) A Similar but not identical.

(24) At that time Mr. Hobbs was chief executive (25) officer and he and I came to an agreement about

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(2) the employment contract.

(3) Q Did he have to get approval from the board before (4) you were hired?

(5) A He got approval from the board before we (6) came to terms about the agreement.

(7) Q Salary?

(8) A Salary, fringe benefits, various aspects of (9) the job.

(10) Q Prior to the time you were scientific director (11) was the prior scientific director working on a (12) full-time basis, five days a week?

(13) A Always part-time.

(14) Q Always three days a week?

(15) A I don't know whether it was three or two or (16) four, but Dr. Sommers in that capacity maintained (17) his active pathology practice at Lenox Hill (18) Hospital.

(19) Q And you maintained a practice in Lexington?

(20) A Modest, yes. I had administrative duties (21) there, but only a moderate practice.

(22) Q What was your starting salary as scientific (23) director in 1988?

(24)

(25)

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(2) Q **REDACTED**

(3) A

(4) Q

(5) A

(6) Q

(7)

(8) A **REDACTED**

(9) O

(11) A (Indicating Yes)

(12) Q Just for clarification, during the deposition, (13) Doctor, if you can use words rather than nods of (14) the head--you are pretty good, but just use words (15) rather than nods of the head so she can get it (16) all down.

(17) When you were scientific director you also (18) remained a member of the scientific advisory (19) board?

(20) A Yes, that's traditional.

(21) Q What are the duties of the scientific director, (22) Doctor?

(23) A The scientific director supervises the (24) scientific staff, and the number of those staff (25) members has varied. There are now two others in

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(2) addition to the scientific director.

(3) Their principal function is to accomplish (4) the day-to-day grant administration, to process (5) the grant applications, both the preliminary and (6) the final, to distribute them to the members of (7) the advisory board for comments and guidance.

(8) They also maintain liaison between the (9) grantees; they are troubleshooters. We make an (10) effort to visit every grantee at least once (11) during the course of a three-year grant at his (12) institution and

on his premises so if there are (13) problems he can point out where we can help, if (14) we can get at it.

(15) They are the support staff to the (16) scientific advisory board and that board consists (17) of 15 very distinguished physicians and since (18) physicians are the final arbiters of the quality (19) of the grant applications, the scientific staff (20) is critical to the whole operation and the (21) scientific director oversees that activity.

(22) Q As a member of the scientific board and (23) scientific director do you have more than equal (24) to one vote?

(25) A No.

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(2) Q You are just one of 15?

(3) A One of 15.

(4) Q You do not have any more authority?

(5) A No more than any other member.

(6) Q Can you make recommendations to the rest of the (7) board?

(8) A Well--

(9) Q I mean to the scientific advisory board.

(10) A So do all of the members.

(11) In the preliminary application, which is (12) usually a two or three-page letter, a scientist (13) may outline the projects he would like to (14) undertake, give a rough estimate of the budget, (15) cite the references pertinent to what he wants to (16) do.

(17) That preliminary letter is circulated to (18) all the members of the advisory board and they (19) all act as a committee of the whole and indicate (20) whether they think it's worth having this (21) investigator complete a full application.

(22) If they agree it is appropriate then the (23) investigator is asked to submit a 12 or 15 (24) exposition of the what he wants to undertake, (25) along with a detailed budget and documents which

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(2) would include his own CV and bibliography, any (3) co-investigators.

(4) That full scale application then is (5) submitted to two members of the scientific (6) advisory board who are most knowledgeable in that (7) area of science.

(8) Those two members come back to the twice (9) annual meeting of the scientific advisory board (10) and they lead the discussion of this particular (11) grant application.

(12) There is a primary reviewer and secondary (13) reviewer. This is the way the National (14) Institutes of Health functions.

(15) At the conclusion of the presentation by (16) the two members, other members of the scientific (17) advisory board may add to the conversation and (18) then somebody may call for a question and each (19) member of the scientific advisory board gives a (20) relative score for this grant, how good he thinks (21) it is, one to five, one being best and five being (22) worst, and every member votes by ballot.

(23) These ballots are collected and they are (24) averaged and that is the score assigned to that (25) particular grant. It's like an NIH study

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(2) section.

(3) Q The people that are on the board, can they also (4) apply for and receive the CTR funding?

(5) A They can. It's unusual, but they can do (6) it.

(7) Q Can they also receive tobacco industry funding

- (8) for research?  
 (9) A They could, but I don't know that any of (10) them do. They could.  
 (11) Q There is nothing--  
 (12) A There would be no prohibition.  
 (13) Q Do you know if any of them ever have?  
 (14) A I expect in years past one or two of them (15) received support from the industry for special (16) research, but I can't tell you exactly how much (17) or when or where.  
 (18) MR. MERRITT: I am sorry, were you (19) restricting your question to the industry (20) or the CTR?  
 (21) MR. HOAG: Including the CTR in that (22) question, of course.  
 (23) Q My understanding of your answer is there is no (24) restriction against--  
 (25) A No.

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- (2) Q --against receiving the CTR funding for research (3) and no restriction against receiving tobacco (4) industry money, separate and apart from the CTR; (5) is that correct?  
 (6) A That is correct.  
 (7) Q Is there any restriction?  
 (8) A Again, this is just like the NIH. There is (9) no prohibition against a member of a study (10) section of the NIH applying for and receiving NIH (11) funding for research.  
 (12) They just can't participate in the (13) decisions made, and in our scientific advisory (14) board not only would a member of the SAB be (15) prohibited from participating in the discussion (16) of his grant, they are also required to leave the (17) room when a grant from his institution is (18) reviewed.  
 (19) In other words, if an SAB member is from (20) Harvard and a grant application comes in from any (21) branch of Harvard, he has to leave the room and (22) is not privy to the discussion and does not (23) participate in the voting, again exactly like the (24) government.  
 (25) Q Was it intentionally formed and developed to be

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- (2) exactly like the government?  
 (3) A No. It was done to be exactly like (4) scientific priority dictates and just as clean as (5) a hound's tooth.  
 (6) The granting process and the application (7) process is done according to the highest (8) scientific standards.  
 (9) Q Who develops the policy regarding what type of (10) research will be funded in the first place prior (11) to the time that applications are received, (12) Doctor?  
 (13) A Well, as I explained this morning, we do (14) not dictate the research. Rather it is from the (15) bottom up.  
 (16) The investigators determine the direction (17) of the research, but the scientific community (18) moves pretty much in unison. There are very few (19) aberrant scientists.  
 (20) They are working with the same tools, with (21) the molecular and cellular biology, giving (22) insight into genetics and fundamental disease (23) processes.  
 (24) It's the scientific community as a whole (25) that determines the thrust of research, and as I

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- (2) have said, it's going more and more to the (3)

submicroscopic level.

- (4) Q Right now you hold both positions, scientific (5) director and CEO?  
 (6) A No.  
 (7) Q What position or positions do you hold?  
 (8) A As I said this morning, chairman of the (9) board, I am the president and chief executive (10) officer of the Council for Tobacco Research.  
 (11) I am not the scientific director; I (12) surrendered that position in 1991.  
 (13) Q Okay.  
 (14) A And I no longer sit on the scientific (15) advisory board. I am the final arbiter in (16) principle, so that would be a conflict and the (17) scientific advisory board gives me their best (18) advice and I follow it in executing that (19) direction.  
 (20) Q What do you mean you are the final arbiter, (21) Doctor?  
 (22) A Somebody has to be responsible for signing (23) off on the grants. I sign the awards letters, so (24) I am the the final authority in the granting (25) process and the scientific advisory board is just

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- (2) that they advise us about the best research to (3) support.  
 (4) Q So if they give you advice and you do not like (5) the advice do you have the option of not taking (6) it?  
 (7) A No. We have never done that.  
 (8) We have made a staff decision about amounts (9) of awards, about terminal awards to a grantee who (10) is not being refunded, but we have some (11) flexibility in the budgeting process so we see (12) that some money is awarded as a final wind-down (13) to a grant.  
 (14) So the staff has the same kind of (15) flexibility that is practiced at the National (16) Cancer Institute, the National Heart and Lung (17) Institute.  
 (18) Q So when the board says we want this funded, you (19) do not have the discretion to say no?  
 (20) A The board never said we want this funded.  
 (21) The board scores the grants and the scores work (22) out--we can usually fund down to a scoring level (23) of 1.4, 1.5, but not beyond that because we just (24) do not have the money.  
 (25) Q So you do not--

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- (2) A Scientific research can consume an infinite (3) budget.  
 (4) Q You have to follow the priority that they have (5) decided?  
 (6) A We do.  
 (7) Q But do you have to?  
 (8) A No, I don't have to.  
 (9) Q You have the discretion not to, but you always (10) do?  
 (11) A I can't say we always do. Sometimes there (12) are extenuating circumstances where somebody has (13) some special plea, some special problem and we (14) can find money to take care of it, even though it (15) might fall below our usual cutoff line.  
 (16) There is some flexibility and we have (17) exercised a little in the grant process, but to (18) the 99th percentile we pretty much take them as (19) they come, sometimes adjusting the budget.  
 (20) Q When you say we have a certain amount of (21) discretion, you mean you as the CEO?

(22) A I am the ultimate authority, but I don't do (23) anything arbitrarily or unilaterally.  
(24) The scientific staff always participates in (25) the budgeting process.

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(2) Q So what are the circumstances when you can go a (3) little below the cutoff that has been established (4) and fund something lower than the cutoff that has (5) been established by the scientific advisory (6) board?

(7) A Oh, there are very few cases, but I suppose (8) a typical case would be an investigator that (9) comes for renewal of a high grant and he does not (10) measure up to the competition.

(11) The competition has increased, his work has (12) not been all that productive and so the (13) scientific advisory board may give him a lower (14) score and then we advise him of this and the (15) investigator will say look, I thought I was going (16) to get NIH funding, is there anything you can do (17) until I get reviewed at the NIH level, or give me (18) an extension on the grant so I can come in and (19) reapply to you in six months.

(20) And circumstances like that we may find (21) \$25,000 to get him through the next six months.

(22) Q You have the discretion to make that decision on (23) your own or do you have to go to the board of (24) directors?

(25) A No, we can make that decision in-house and

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(2) that is the same sort of policy that is followed (3) at the federal level basically, places like the (4) American Heart, American Cancer, American Lung.

(5) Q Do you work under a written contract of some (6) kind?

(7) A Do I work under a contract? I have a (8) letter which is a contractual agreement between (9) the CTR and myself.

(10) Q What is the length of time of your contract, Dr. (11) Glenn?

(12) A It has no limitation on it.

(13) Q It is--

(14) A These were the terms of employment. I can (15) terminate it or they can, but there is no time (16) limit it; not a year to year.

(17) Q So the contract explains--

(18) A It's not exactly a contract; it's just a (19) letter.

(20) Q The letter just says what your salary is, what (21) your benefits are?

(22) A What the initial salary was and what the (23) benefits are and that's about it.

(24) Q So it is what is called an "at will agreement";

(25) you can leave and they can say good-bye, either

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(2) way?

(3) A Yes.

(4) Q By "they," I mean the board of directors?

(5) A Yes.

(6) Q At any time they can just vote and say we do not (7) need you anymore?

(8) A Exactly.

(9) Q Do they have to give you a reason?

(10) A No.

(11) Q Do they give you a reason?

(12) A If they said we do not need you anymore, (13)

they would not have to give me a reason.

(14) Q Well--

(15) A I would not want to hear it anyway.

(16) Q But the policy and procedure would be regardless (17) of who the CEO is, if the board of directors (18) decides at any given moment they do not want that (19) person as CEO, they have the discretion to vote (20) and the CEO will leave?

(21) A Yes.

(22) Q Does the CEO get any severance if that happens, (23) Doctor?

(24) A It has not be discussed.

(25) Q Because it has never happened that you know of?

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(2) A No.

(3) Q That is also true for the scientific director (4) position?

(5) A Well, the scientific director reports to (6) the CEO.

(7) Q The scientific director is selected by the CEO; (8) is that right?

(9) A Yes.

(10) When I became the CEO I recommended one of (11) our staff be the new scientific director. This (12) was agreeable to Mr. Hobbs, the outgoing CEO, and (13) it was agreeable to the board of directors and so (14) that individual was promoted.

(15) Q The board of directors has to agree?

(16) A It does not have to. This is really like a (17) staff application rather. The board does not (18) have to agree to it, but we have always done it (19) that way.

(20) I have replaced most of the members of the (21) scientific advisory board. I have never done it (22) arbitrarily or capriciously. That is what you do (23) when you're dean of a school; nothing (24) unilaterally. (25) I have advised the board in the selection

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(2) of every new member that has come on. There are (3) 15 and I have appointed and defined nine of them (4) with the sanction of the entire scientific (5) advisory board.

(6) We do the same with staff applications.

(7) The board of directors are made aware and given (8) the opportunity to discourage the application if (9) they wish to.

(10) Q The scientific director, is that person's (11) position at will?

(12) In other words, if you as the CEO decided (13) we do not want you anymore, that is it?

(14) A It's true of everybody that is employed (15) there.

(16) Q So there is no such thing as tenure?

(17) A No, sir.

(18) There should not be tenure anywhere.

(19) MR. HOAG: Off the record.

(20) (Whereupon, there was a discussion (21) off the record.)

(22) Q So far as the board of directors is concerned (23) when a project--maybe that is not the right word, (24) but when a project is selected for funding by the (25) scientific advisory board, does the board of

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(2) directors hear about it immediately or is it just (3) told to them in passing or anything like that, (4) Doctor?

(5) A The board of directors is pretty remote (6)

from the actual grant process and the actual (7) research that is supported.

(8) The board of directors has two annual (9) meetings, June and December, and at that time (10) they are provided with a list of new grants (11) funded.

(12) They are made aware of the activities of (13) the scientific advisory board. They are made (14) aware in broad strokes of the number of (15) applications we receive, the number we are able (16) to fund and then they approve our budget.

(17) Q Okay.

(18) A They are not integral to the selection (19) process at all.

(20) Q The tobacco industry itself, Doctor, and by (21) "tobacco industry" I mean the various cigarette (22) companies, it was their decision to form the (23) Council for Tobacco Research originally; is that (24) correct?

(25) A Then called the Tobacco Industry Research

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(2) Committee.

(3) Q I am sorry?

(4) A The TIRC.

(5) Q They formed the Tobacco Industry Research (6) Committee in 1954; correct?

(7) A Yes.

(8) Q It was their decision to do that? I mean the (9) tobacco industry's decision, Doctor?

(10) A Yes.

(11) Q When they first did that, they decided what that (12) was going to mean, what the Tobacco Industry (13) Research Committee was going to do?

(14) A Yes.

(15) Q And what types of research they were going to (16) fund; is that correct?

(17) A They stated their purpose was to support (18) research in questions of smoking and health and (19) they pledged to hire distinguished medical (20) scientists to head the TIRC and they did so.

(21) They hired Dr. Clarence Cook-Little, who (22) was one of the country's most outstanding (23) investigators. He was president of the (24) University of Michigan and University of Maine.

(25) He established the laboratory that

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(2) developed the first inbred strain of mice, so (3) that you can get consistent laboratory results (4) all of these mice carried the same genetic (5) attributes.

(6) Dr. Little was also the first president of (7) the organization that became the American Cancer (8) Society, very distinguished fellow and gave (9) excellent leadership for 20 years.

(10) MR. MERRITT: Not quite, but close.

(11) A 17, something like that.

(12) Q When the tobacco industry decided to form the (13) research committee they had the discretion to (14) fund only research that was directly related to (15) tobacco and health?

(16) A No, they never said that.

(17) Q I know they did not, but they could have if they (18) wanted to. They could have limited it to that; (19) is that correct?

(20) A Well, I don't think they would have been (21) that presumptuous.

(22) That would be trying to foretell the (23) future, the way medical research was going.

(24) Nothing was said along those lines.

(25) Clearly they were most interested in the

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(2) questions of smoking and health, but I don't (3) think they would have limited themselves to that.

(4) They would have been wise enough to keep it a (5) broad charge.

(6) Q If they wanted to limit it to that, they could (7) have limited it to that?

(8) A I was not there. This was 40 years ago, (9) 1954.

(10) Q Is there any reason today, Doctor, if they wanted (11) to, the board of directors, could vote and say we (12) want research related to tobacco research and (13) health?

(14) A They could do that, but they have now been (15) educated to the point they know that you cannot (16) narrow the focus of medical research, that (17) virtually anything of a basic molecular, (18) cellular, genetic nature will have some (19) fundamental application in issues of smoking and (20) health, so it just is inconceivable that they (21) would try and direct the research.

(22) Q Or limit it to tobacco smoking and health?

(23) A Well, when you say limit it, it implies (24) there is some finite body of knowledge that (25) relates to smoking and health and that is not

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(2) true.

(3) It's simply not true. Anything we discover (4) of the way the cell behaves is relevant to the (5) issues of smoking and health.

(6) Q You have seen the journal "Tobacco Control," the (7) "Tobacco Control" journal? Have you ever read (8) that?

(9) A No, I don't think so.

(10) Q Have you ever heard of it?

(11) A Yes.

(12) Q So you are not familiar with the type of research (13) that they publish?

(14) A No.

(15) Q What I am getting at is to limit the scope of the (16) research because there are limited funds and the (17) tobacco industry made a pledge to find out (18) everything they could possibly find out about the (19) health effects of tobacco smoking.

(20) A We are doing it as fast as we can.

(21) Q By spreading the field out to anything that is (22) molecular and cellular?

(23) A No.

(24) Q You do not--

(25) A Not true.

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(2) Q Let me finish and then you can tell me whatever (3) you want to tell me.

(4) By spreading out the field to everything (5) that is molecular instead of narrowing the scope (6) to tobacco smoking and health, doesn't it negate (7) the stated purpose of the Council for Tobacco (8) Research?

(9) A I have explained this to you, Mr. Hoag.

(10) You're exposing your ignorance of basic medical (11) research.

(12) If we say we are only going to study (13) smoking and health and that means we are only (14) going to expose guinea pigs to tobacco smoke, we (15) are putting constraints on the scientific (16) community that

are artificial and prohibitory.

(17) This is not in the interest of good (18) science, it's not even in the interest of (19) democratic process.  
(20) Good biomedical investigators ought to be (21) encouraged to pursue knowledge in its broadest (22) form because as they develop basic bodies of (23) knowledge about any aspect of normal and abnormal (24) functions, we are adding to the body of knowledge (25) that will help us understand disease processes

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(2) and that is what it is all about.

(3) The diseases that are most associated with (4) smoking are well known, cardiovascular disease, (5) pulmonary disease, to a lesser extent disease of (6) other organ systems, and we have addressed our (7) attention to these diseases and the fundamental (8) processes that go towards investigation of these (9) diseases.

(10) Q Did the CTR ever fund any research regarding the (11) criteria for human exposure for humidity in (12) occupied buildings?

(13) A You cited Dr. Sterling's work this morning (14) and I would say he was one of the leading (15) investigators in that area.

(16) Q Did the CTR fund that research?

(17) A Yes, as a special project.

(18) Q When you say "a special project," what are you (19) referring to?

(20) A Well, in the earlier days of the CTR there (21) were areas that were poorly understood by the (22) scientific community, but primarily by our (23) sponsor companies and their attorneys, and (24) special projects were developed to further our (25) understanding in these particular areas.

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(2) These were above and beyond and outside of (3) the competitive grant process. These were (4) projects that the sponsor companies wished to (5) fund and the CTR acted as a conduit for those (6) funds, the funds awarded for special projects.

(7) There are only about a 100 over the years (8) as opposed to thousands of grants. These (9) projects were funded through the CTR because the (10) CTR had the expertise of dealing with (11) institutions.

(12) There is a certain formality of the grant (13) process. A researcher, investigator makes the (14) application for research funding to the CTR or (15) NIH or anybody else.

(16) The grant award is made to the institution (17) where this investigator works and you have to (18) deal with local financial officers and you have (19) to follow the statelily minutet getting the money (20) into the university system.

(21) The companies and their attorneys did not (22) have that expertise and they asked that the CTR (23) act as the disbursing agent.

(24) Whenever a special project was recommended (25) or approved, the funds were forthcoming from the

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(2) industry to support that special project. It did (3) not impact upon our research project at all.

(4) Q But it was--

(5) A We were merely the custodian of those (6) funds.

(7) Q That was another form of funding that the CTR did (8) but not through the scientific advisory board; is

(9) that correct?

(10) A Yes.

(11) Q And it did not have the independence of the (12) scientific advisory board?

(13) A It was research that the companies or their (14) attorneys felt was appropriate and of some use to (15) them, so quite the contrary.

(16) Q And it did not have to necessarily be related to (17) tobacco and health--

(18) A No.

(19) Q --at all?

(20) A Well, I think they were all health related (21) because everything we have ever funded to my (22) knowledge has been related to human health and (23) disease.

(24) Q Like for example the one we talked about earlier, (25) indirect health effects of relative humidity in

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(2) the indoor environment, that does not have (3) anything to do with tobacco.

(4) A I would take exception to that. That's (5) your interpretation.

(6) I would say the relative humidity in the (7) room has a lot to do with our health.

(8) Q That was not my question. I did not say health; (9) I said tobacco.

(10) A Yes.

(11) If you will let me finish, it has to do (12) with it because it has to do with our health. If (13) you compound the problem of low humidity with (14) environmental tobacco smoke, perhaps that is a (15) relationship that needs to be identified.

(16) Q Was that part of this research, that they looked (17) at low humidity along with tobacco smoke, Dr.

(18) Glenn?

(19) MR. MERRITT: I will object to that.

(20) You have it. You have the research; (21) you have just given him the title.

(22) Q I want to know if you know that. That is all I (23) have here, the title.

(24) MR. MERRITT: I object to the form of (25) the question.

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(2) A I am not familiar with the article so I (3) cannot respond to you.

(4) Q What I want to ask you is this: Do you know if (5) the CTR when they funded--and I will show you the (6) name and I will copy it and make it an exhibit, I (7) am not trying to hide what I have--this (8) particular article, Doctor, "Indirect Health (9) Effects of Relative Humidity in Indoor (10)

Environments," and Dr. Sterling was one of the (11) authors of this article that was funded at least (12) in part by the CTR, did this research look at how (13) cigarette smoke impacts with relative humidity?

(14) A I have no idea, but you have this (15) categorized as indoor air quality and indoor air (16) quality relates to humidity, probably more than (17) any other single factor.

(18) I do not see any discrepancy there at all (19) and I would point out again that the CTR did not (20) fund it; it was the disbursing agent for these (21) funds.

(22) Q The CTR was provided with the money so that the (23) CTR could then give that money to the people that (24) the tobacco industry wanted to fund?

(25) A Correct.

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- (2) Q It was--  
 (3) A It was legitimate.  
 (4) Q So the tobacco industry decided what they wanted (5) to fund and the CTR just took the money that the (6) tobacco industry gave it for that funding and (7) provided it to the researchers?  
 (8) A I don't think you said it as well as I did.  
 (9) The CTR was the disbursing agent for the (10) funds. The project was approved and encouraged (11) by the sponsor companies and their attorneys.  
 (12) The CTR was asked to be the fiduciary agent (13) and the funds were given to the CTR and we (14) followed the process of disbursing funds to the (15) respective institutions.  
 (16) Q So the CTR's role was to disburse the funds that (17) the tobacco industry stated they wanted disbursed (18) to who the tobacco industry told the CTR to (19) disburse it?  
 (20) A Only in about 100 special projects.  
 (21) I have reviewed a number of the papers that (22) emerged from the special projects; there is some (23) very fine research there.  
 (24) Dr. Sterling has a reputation of being a (25) world authority on air quality.

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- (2) Q So the issue to you is whether or not it is good (3) research, not whether or not it has anything to (4) do with tobacco?  
 (5) MR. MERRITT: Objection to the form.  
 (6) Q Is that correct?  
 (7) A No, I don't think that.  
 (8) I have explained that you can't separate (9) these things, one from another. The project (10) advances our knowledge of air quality, for (11) example, it does not have to involve tobacco (12) smoke.  
 (13) It can be measuring other parameters and be (14) good science that relates to the issue of smoking (15) and health in one way or another.  
 (16) Q It can be used to assist the tobacco industry in (17) defending itself against lawsuits; is that (18) correct?  
 (19) A I don't know about that.  
 (20) That is a legitimate question, but I have (21) no idea about whether this is useful to them or (22) not.  
 (23) Q And the tobacco industry used the CTR for the (24) purpose of administering the funding of these (25) special projects; correct?

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- (2) A I have said that before too.  
 (3) They did not use the CTR at all. I don't (4) think the industry has ever used the CTR.  
 (5) They asked the CTR to be the disbursing (6) agent, primarily because the CTR was accustomed (7) to the procedures that are common to universities (8) and other research institutions, and the way that (9) funds are put into the scientific community.  
 (10) Q Did the fact that by having the CTR put its name (11) on this insulate them from responsibility for the (12) research have anything at all to do with them (13) using the CTR in this manner?  
 (14) MR. MERRITT: Objection to the form.  
 (15) A Investigators who were awarded special (16) projects were given a letter that advised them (17) this was a special project, not a grant award, (18) and that they should identify the source of their (19) support as a special project of the Council for (20) Tobacco Research.  
 (21) Q They didn't--

- (22) A And the majority of publications that (23) resulted I think had that tag line.  
 (24) On the contrary, grants that were awarded (25) through the scientific advisory board, grantees

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- (2) were requested to identify the source of their (3) funding as the CTR grant award, usually with the (4) number.  
 (5) Q So--  
 (6) A There is a little difference.  
 (7) Q So the researchers like Dr. Sterling, when they (8) did this contract research for a special project, (9) they were required to reveal in their (10) publications that this was a special project (11) funded by the Council for Tobacco Research?  
 (12) A Correct.  
 (13) Q And the Council for Tobacco Research was run by (14) the CEO for the council?  
 (15) A Well, yes. The chief executive officer is (16) a ultimate administrative authority.  
 (17) Q The same person who was overseeing what the (18) scientific advisory board did?  
 (19) A He did not oversee that.  
 (20) The scientific advisory board is (21) independent. When I became the chief executive (22) officer I relinquished my post on the scientific (23) advisory board, so I do not influence the board (24) nor did any CEO in the past.  
 (25) Q So the CEO was not independent during this time

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- (2) they were receiving the special project funds; (3) correct?  
 (4) MR. MERRITT: Objection to the form.  
 (5) The CEO is not receiving special (6) project funds.  
 (7) Q During the time the CTR received special project (8) funds, the CEO is not independent as far as (9) decision making concerning who would be funded (10) for those special projects; correct?  
 (11) A The special projects were funded on the (12) request of the companies who were our sponsors (13) and the CTR merely served as a conduit for the (14) funds that the industry wished to put into a (15) certain special project.  
 (16) Q Was that revealed in the statement that the (17) researchers made, that this special project is (18) only a conduit, the CTR is only a conduit for the (19) tobacco companies who really asked me to do this (20) research?  
 (21) A No, that is simplistic; special projects of (22) the CTR.  
 (23) Q The general academic community knew the words (24) "special projects," that this is something that (25) the tobacco companies asked you to do?

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- (2) A They know this is not a grant award; this (3) is not a competitive grant award.  
 (4) Q Why would they know that "special project" means (5) this is something that the tobacco companies (6) asked you to do for them?  
 (7) A Your naivete overwhelms me.  
 (8) The scientific community has a certain (9) routine, just as I am sure the legal profession (10) has certain parameters of function and activity (11) that are well-known to you and are cliches for (12) you, so does the scientific community.  
 (13) Everybody in the scientific community knows (14)

what a competitive grant is. They know what a (15) special project is also, so we what are doing is (16) identifying it as a special project funded by the (17) the CTR and that is funded by the tobacco (18) industry so there is nothing nefarious about it; (19) it's just SOP.

(20) Q So you are saying if you know that a special (21) project is funded by the Council for Tobacco (22) Research--

(23) A You know the money is coming from the (24) tobacco industry.

(25) Q You know that for the grant research money too?

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(2) A Yes, but it's a competitive award. It goes (3) through the advisory board and the competitive (4) grant process, which is different from a (5) contract.

(6) Even the federal government issues (7) contracts for research. They put out RFP and ask (8) for proposals for a certain project, so what the (9) CTR was doing on behalf of the tobacco industry (10) is exactly what the federal government does.

(11) There is no difference.

(12) Q The federal government? When does the federal (13) government request that one of its agencies fund (14) national research money in an effort to disprove (15) a health effect of tobacco?

(16) MR. MERRITT: I will object to the (17) form of the question.

(18) Q Have they ever done that?

(19) A I object to the form of the question (20) because it does not seem to follow the line of (21) reasoning that we have been discussing.

(22) Q Even if it does change the line of reasoning, let (23) me ask you this: Has the federal government ever (24) funneled money through one of its funding sources (25) for the purpose of disproving the health effects

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(2) of cigarette smoking?

(3) MR. MERRITT: Objection to the form.

(4) A I reject that because this is not--you have (5) not demonstrated to me in any way that Dr.

(6) Sterling's papers on humidity and environmental (7) air is disproving of health effects from (8) cigarette smoke. It does not say that.

(9) Q I am--

(10) A Nothing that you have shown me says that (11) that paper refutes the idea that smoking has any (12) deleterious health effects.

(13) MR. HOAG: I move that that last (14) response be stricken.

(15) Q I asked you a question. You can answer it any (16) way you want to, but I would appreciate it if it (17) was responsive.

(18) A I was responding to the question.

(19) MR. MERRITT: It sounded responsive to (20) an argumentative question.

(21) MR. HOAG: Could you read back the (22) question? (23) (Whereupon, the record was read (24) by the reporter.)

(25) Q Has the federal government ever done that,

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(2) Doctor?

(3) A I have no idea, but the federal government (4) continually and continuously requests contract (5) work, special projects proposals for focused (6) research, so the nature of research sponsored by (7) the tobacco

industry is no different from what is (8) done in the general scientific community.

(9) Q I will show you what I will have marked as an (10) exhibit, this document.

(11) A Yes.

(12) MR. HOAG: Mark it as Plaintiffs (13) Exhibit 1 for Identification.

(14) (Whereupon, document was marked (15) as Plaintiffs Exhibit 1 for (16) Identification as of this date.)

(17) Q Have you ever seen that before?

(18) A No, I have not seen it.

(19) Q Referring to the first page of Plaintiffs (20) Exhibit 1, which says "The Tobacco Industry (21) Research on Smoking and Health, a \$111 Million (22) Commitment," that is what the first page says, (23) and the second page, referring to the first (24) column in the middle paragraph which says "The (25) Council for Tobacco Research," and states "in the

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(2) interest of strict objectivity the tobacco (3) industry has supported independent research (4) efforts with completely nonrestrictive funding, (5) mainly through the Council for Tobacco Research."

(6) So far as you know is that an accurate (7) statement?

(8) A Yes.

(9) Q The next paragraph says the "CTR was established (10) by the industry in 1954 to provide financial (11) support for research by independent scientists (12) into tobacco use and health."

(13) So far as you know is that an accurate (14) statement?

(15) A Yes.

(16) Q So that the Council for Tobacco Research was (17) established to provide financial support for (18) research by independent scientists; is that (19) correct?

(20) A Yes.

(21) Q That is its reason for being, Doctor; is that (22) correct?

(23) A That was the stated reason, yes.

(24) Q The next paragraph says "although funded by the (25) tobacco manufacturers, the CTR remains completely

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(2) autonomous in its programs of grants-in-aid and (3) contracts for research with institutions and (4) laboratories."

(5) So far as you know is that a true and (6) accurate statement?

(7) A True.

(8) Q Is there a difference between a grant-in-aid and (9) and contracts?

(10) A Yes.

(11) Q What is the difference?

(12) A A contract is just as it says, a contract (13) between an investigator and a funding source and (14) it's usually for a specific purpose.

(15) And the Council for Tobacco Research had (16) one major contractual arrangement with a concern (17) called Microbiological Associates in the (18) Washington, D.C. area and that contract called (19) for MBA to expose animals to cigarette smoke in (20) the hope they could determine whether there would (21) be any malignant change or any abnormalities, (22) pulmonary abnormalities, noted from the (23) inhalation of such smoke.

(24) That study went on over a number of years (25) and it seems to be something like \$12 million was

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- (2) expended in a fairly fruitless effort, so that is (3) a contract.
- (4) Q The scientific advisory board, did they (5) independently decide to fund that?
- (6) A Yes, they were the oversight for that (7) contract and it was their decision to terminate (8) it.
- (9) Q The special projects, were those contracts?
- (10) A They were—you could say they were (11) contracts, but they were what they said, special (12) projects.
- (13) They were projects that sponsor companies (14) wished to support and I don't know exactly how (15) they got together with the various investigators.
- (16) Sometimes I suspect the investigators came to the (17) company; sometimes the company went to the (18) investigators.
- (19) But the special projects was joined and (20) CTR's function, if that, was merely the (21) disbursing agent for the funds.
- (22) Q And the funds were done through contracts, not (23) grant-in-aid?
- (24) A They were not grants-in-aid and not (25) contracts of the advisory board.

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- (2) Q They were contracts, though?
- (3) A To the extent it was a special project and (4) that is a little different from a contract.
- (5) Q They were written documents that said how much (6) money the people would receive for doing what; (7) correct?
- (8) A For doing various things?
- (9) Q Right.
- (10) A I think it's fair to say most of the (11) special projects resulted in publications; some (12) did not.
- (13) In that sense it was not even close to a (14) contract.
- (15) Q Is it your understanding that a contract would (16) require actual publication?
- (17) A Actual results; that's the nature of the (18) contract. The contractor expects certain (19) productivity.
- (20) Q So the special projects contracts sometimes did (21) not result in publications; is that correct?
- (22) A Sometimes.
- (23) Q Sometimes they did?
- (24) A Yes.
- (25) Q So is it your understanding when they resulted in

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- (2) publications they were completed contracts, but (3) when they did not they were not contracts, (4) Doctor?
- (5) A No, I did not say that.
- (6) MR. MERRITT: Objection to the form.
- (7) A Special projects is different from the (8) usual sort of research projects or contracts that (9) are—well, when the federal government does it (10) it's at their initiative; they want you to do a (11) certain specified project.
- (12) Special projects arose in a variety of (13) ways, but I don't know that. I was not there, I (14) could not put myself inside the heads of the (15) people there 40 years ago.
- (16) Q How long did the special projects exist, from (17)

what period of time until what period of time, (18) Doctor?

(19) A I am not sure. I think the last payout on (20) special projects was probably seven or eight (21) years ago.

(22) Q So they were still being funded to some extent (23) during a portion of the time you were there, (24) Doctor?

(25) A When I first got there there were some

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- (2) ongoing, but no new special projects were even (3) recommended after my arrival and I don't know (4) when the last one was.
- (5) Q Recommended by who?
- (6) A By the sponsors or anyone else.
- (7) Q By the tobacco industry?
- (8) A Yes.
- (9) Q Do you know why they stopped recommending special (10) projects seven or eight years ago?
- (11) By "they," I mean the tobacco industry.
- (12) A My assumption, and it may be incorrect, was (13) they found it was a fairly nonproductive way to (14) encourage scientific research.
- (15) Q You do not know; that is your assumption?
- (16) A That is my assumption.
- (17) Q You did not have anything to do with the decision (18) not to continue with special projects?
- (19) A Not really, no.
- (20) Q During the time that you worked as scientific (21) director and some of these were being funded what (22) was your role with relationship to the funding (23) for those special projects?
- (24) A None.
- (25) As scientific director I had no involvement

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- (2) with special projects because no new ones came (3) through.
- (4) Q The ones that were still ongoing, you did not (5) have anything to do with those?
- (6) A No.
- (7) Well, no. The answer is no, because we (8) were simply the disbursing agent; there was no (9) administration for us to do. There was no (10) scientific or administrative oversight which we (11) had to give.
- (12) All we were was the physical disbursing (13) agent.
- (14) Q All you did was take the money that the tobacco (15) industry gave you and then forward that money to (16) the researcher?
- (17) A Outside of our grant program and outside of (18) our grant budget, there was additional money.
- (19) We merely served as the conduit of the (20) funds for the convenience of the industry.
- (21) Q So the only thing the CTR did for those special (22) projects was receive the money from the tobacco (23) industry and forward that money to the (24) researcher?
- (25) A Yes.

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- (2) You realize you're talking about a very (3) minor amount of money compared to our overall (4) research budget.
- (5) We have now funded \$300 million in basic (6) biomedical research. I don't know what the (7) dollar value was, but it was nowhere close to (8) that.
- (9) Q Do you have any idea what the amount of

money (10) spent on special projects was?

(11) A There were only about 100 special projects (12) and I have looked through them.

(13) It seems to me many of them were projects (14) of \$25,000, that magnitude.

(15) Q Were any of the projects half a million dollars, (16) Doctor?

(17) A Yes, there were some long-term projects of (18) that magnitude.

(19) I don't know how much money was spent (20) overall, but it certainly would not even come (21) close to the \$300 million research budget.

(22) Q It was many millions of dollars for those (23) projects; wasn't it?

(24) A I can't say that.

(25) Q Have you done any totals?

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(2) A No.

(3) Q You know some of them were \$500,000 and more and (4) some of them were only \$25,000?

(5) A I would say that's true, yes.

(6) Q But--

(7) A More of them, it seemed to me as I went (8) through these informally, were on the order of (9) smaller magnitude.

(10) Q Were any of them for more than \$1 million?

(11) A I don't remember any.

(12) Q If all the CTR had to do was take money that the (13) tobacco industry had already decided to spend for (14) specific research and provide that money to the (15) researcher, why was it necessary for the CTR to (16) take the money?

(17) Why couldn't the tobacco industry simply (18) have paid the money directly themselves to the (19) researcher?

(20) A They could, and I have explained that (21) before; maybe you missed the point.

(22) There is a certain statelike minuet of (23) funding universities and research institutions (24) and neither the industry nor their attorneys were (25) familiar with the grant process or the way that

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(2) research funds are funneled into an enterprise.

(3) The CTR was familiar with this and we had (4) the bookkeeping mechanisms set up. We had (5) personnel that were familiar with it.

(6) We had scientific staff that could (7) interface with the investigator, if that were (8) necessary, to help him straighten out (9) administrative details of the project.

(10) It was just a convenient sanction. It was (11) a convenience to the industry for the CTR to be (12) the conduit and a great convenience to the (13) universities; they did not have to deal with (14) corporate entities that knew nothing about the (15) way the finances were handled there.

(16) Q They paid the CTR to do this?

(17) A No. The CTR was supported by an (18) administrative budget already. We were there.

(19) It was a free service in essence and it was (20) a very small part of our overall activity.

(21) Q So some of the staff that was there for the (22) purpose of doing the independent CTR research was (23) used by the tobacco industry as a conduit for (24) their money to go to other researchers?

(25) A As a convenience.

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(2) Q But this was being done at the same time that the (3) tobacco industry was saying publicly that (4) everything the CTR was doing was independent?

(5) MR. MERRITT: Objection to the form.

(6) A I don't think it says that.

(7) MR. MERRITT: Are you referring to (8) this document?

(9) MR. HOAG: Yes.

(10) Q Let's refer back down to the second column, third (11) paragraph.

(12) A (Reading) Although funded by the tobacco (13) manufacturers the CTR remains completely (14) autonomous in its programs of grants-in-aid and (15) contracts for research.

(16) Q "With institutions and laboratories?"

(17) A Correct.

(18) Q That was not true?

(19) A It is true.

(20) Q It was not true when they funded special (21) projects?

(22) A They are above and beyond the grants-in-aid (23) and contract program. It's a very different (24) thing.

(25) It's perfectly acceptable in the scientific

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(2) community, the federal government private funding (3) agencies.

(4) Q This paragraph does give the average person (5) reading--it the impression that--

(6) A I am not an average person and I read it to (7) say exactly what it says, that this is (8) independent.

(9) Q You and I agree you are not an average person.

(10) You are an M.D., you are a dean of medical (11) schools.

(12) A And I could read.

(13) Q You are not an average person, but when it states (14) the words "although funded by the tobacco (15) manufacturers, the CTR remains completely (16) autonomous," what do those words, "completely (17) autonomous," mean to you?

(18) A Completely autonomous in its programs of (19) grants-in-aid and contracts.

(20) CTR's program of grants-in-aid and (21) contracts were completely autonomous, were then (22) and are now.

(23) Q But the CTR was doing something for the tobacco (24) industry that was not completely autonomous, (25) Doctor?

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(2) A Perfectly legal and legitimate and a (3) practice observed in many cases at the federal (4) level and other private granting agencies; (5) nothing nefarious about that.

(6) Q It was a lie?

(7) A No. That statement is perfectly true.

(8) (Reading) The CTR remains completely (9) autonomous in its programs of grants-in-aid and (10) contracts.

(11) "Its programs." The special projects were (12) for the benefit of the industry perhaps, but they (13) were funded by the industry and we were simply a (14) conduit.

(15) I don't know how I can make it any clearer (16) than I have.

(17) Q You just said a little while ago that when they (18) disclosed this on the research they published (19) they said this was funded by a special project of (20) the Council for Tobacco Research.

- (21) A Correct.  
 (22) Q So its program would include the special (23) projects?  
 (24) A No, it did not. We had a program of (25) grants-in-aid and contracts that were autonomous

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- (2) and free and independent of the industry, and (3) then as a convenience to all concerned, all the (4) parties, we served during those years as the (5) conduit for funds for special projects, and I do (6) not think you understand special projects, as (7) much as I have tried to explain it to you.  
 (8) Q The disclosure that was supposed to be in the (9) research published by people under contract for a (10) special project said that they were funded by a (11) special project of the Council for Tobacco (12) Research; correct?  
 (13) A Sometimes they failed to put the tag line (14) on this. It was a great annoyance, but they were (15) supposed to put it on the papers that resulted.  
 (16) Q Because you are supposed to disclose your funding (17) source?  
 (18) A Yes.  
 (19) Q But the truth was the funding source was not the (20) Council for Tobacco Research but was the tobacco (21) industry; correct?  
 (22) A Well, that's true of the grants-in-aid (23) program. That is tobacco money.  
 (24) These are not public funds; they were not (25) generated by philanthropy.

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- (2) Q The tobacco industry publicly stated that the CTR (3) was an independent, completely autonomous (4) organization; correct?  
 (5) A Well, autonomous to the extent that our (6) decision about grants-in-aid and contracts (7) through our scientific advisory board were not (8) influenced by the industry.  
 (9) Anyway, a special project was a different (10) matter. This was something that the sponsor (11) companies wanted to have done for reasons that (12) were theirs.  
 (13) We simply served as the conduit for the (14) funds. How many times do I have to say that?  
 (15) Q So when the tobacco industry provided the CTR (16) with the funding to fund the tobacco industry's (17) own special projects, isn't it true that it was a (18) lie for the tobacco industry to say publicly that (19) the CTR remained completely autonomous?  
 (20) A No, sir.  
 (21) MR. MERRITT: Objection as to the (22) form.  
 (23) You have answered the question.  
 (24) MR. HOAG: Let's take a break.  
 (25) (Whereupon, a brief recess was taken.)

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- (2) CONTINUED EXAMINATION (3) BY MR. HOAG:  
 (4) Q I am still referring to Plaintiff's Exhibit 1, (5) Doctor.  
 (6) The second column, last paragraph states (7) "Eminent scientists believe that the questions of (8) smoking and health are unresolved and that (9) research in this area must go forward."  
 (10) Do you agree with that?  
 (11) A I agree. I don't know the date of this (12) statement; it nowhere states when this was (13) printed.  
 (14) Q Do you agree with that statement now?

- (15) A I think we are closer to some questions (16) about smoking and health.  
 (17) We certainly all recognize smoking as a (18) risk factor, have done so for 100 years, but it's (19) a clearer relationship now than it's ever been (20) before and I certainly agree the research in this (21) area must go forward.  
 (22) Q Do you think "questions of smoking and health are (23) unresolved and research must go forward," as it (24) states in there?  
 (25) A Yes.

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- (2) Q And you believe that today?  
 (3) A I do, but "unresolved" to me is a broad, (4) general term.  
 (5) I don't know the mechanism by which smoking (6) may increase the risk of lung cancer. I don't (7) know what the mechanism is, so there are a lot of (8) unresolved questions.  
 (9) The relationship between smoking and (10) various diseases is numerically established. We (11) all know that, but there are fundamental (12) scientific questions that still must be resolved.  
 (13) MR. HOAG: I will have this marked as (14) Plaintiff's Exhibit 2 for Identification, (15) please.  
 (16) (Whereupon, document was marked (17) as Plaintiff's Exhibit 2 for (18) Identification as of this date.)  
 (19) Q I will show you a document marked as Plaintiff's (20) Exhibit 2, which says "Statement of Policy," and (21) above that it says "The Council for Tobacco (22) Research--USA, Incorporated."  
 (23) Have you ever seen that before?  
 (24) A Yes.  
 (25) Q Is that the current policy of the Council for

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- (2) Tobacco Research?  
 (3) A It's the policy that we distribute to grant (4) applicants.  
 (5) Q How long has that policy been in existence?  
 (6) A Well, it's had little modifications but (7) this policy dates back, I believe, to 1954.  
 (8) Q What leads you to suspect that the policy dates (9) back to 1954?  
 (10) A Well, grant applicants had to have some (11) guidelines and had to have some information about (12) the structure and function of the Council for (13) Tobacco Research, so whether it was this policy (14) or another policy, I cannot imagine that the TIRC (15) or the successor, the CTR, could have functioned (16) without some sort of written guideline for (17) investigators.  
 (18) Q Referring to the second paragraph of the general (19) policy, the second sentence, it says--talking (20) about the Council itself--"It will make no (21) attempt to direct the administration of a project (22) once started."  
 (23) Is that true?  
 (24) A Yes.  
 (25) Q Has that always been true?

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- (2) A As far as I know.  
 (3) Q But that is not true for special projects; (4) correct?  
 (5) A Well, this policy applies to grants-in-aid (6) and contracts.  
 (7) Special projects were, I suspect, more (8) informally done than grants-in-aid or contracts.

(9) Q Are you aware of what, if any, different (10) statement of policy individuals were provided who (11) had special projects?  
 (12) A No.  
 (13) Q Are you aware of whether or not the people who (14) had special projects funded by the CTR received a (15) statement of policy of some kind?  
 (16) A I don't know, but it would not have been (17) necessary. It was a special projects; it could (18) have been just an agreement by letter; "yes, we (19) want to support your research into autopsy (20) findings of unsuspected lung cancer and we will (21) provide \$25,000 a year for each of the next three (22) years." It could be that simple.  
 (23) MR. HOAG: I would like this marked as (24) Plaintiff's Exhibit 3 for Identification, (25) please.

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(2) (Whereupon, document was marked (3) as Plaintiff's Exhibit 3 for (4) Identification as of this date.)  
 (5) Q I am showing you what has been marked as (6) Plaintiff's Exhibit 3.  
 (7) Have you ever seen that before?  
 (8) MR. MERRITT: You mean before today?  
 (9) MR. HOAG: Before today, yes.  
 (10) Q Have you ever seen this document before today,  
 (11) Doctor?  
 (12) A Not before today, not this document, no.  
 (13) Q Have you ever seen it before I showed it to you  
 (14) today?  
 (15) A No.  
 (16) Q You are familiar with the work of Dr. Theodore D.  
 (17) Sterling?  
 (18) A Yes, sir.  
 (19) Q Okay.  
 (20) A In vague generalities, not in specifics.  
 (21) Q You know that the CTR funded special projects  
 (22) that he worked on?  
 (23) A The industry funded it through the CTR.  
 (24) Q So it was not true that the CTR funded it?  
 (25) A No.

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(2) I explained to you previously that the CTR (3) acted as the conduit for the funds that the (4) industry wished to provide to these (5) investigators.  
 (6) Q So if somebody said the CTR funded it, that would (7) not be true?  
 (8) A It funded it to the extent we were the (9) disbursing agent, the fiscal authority, but we (10) were acting on behalf of the industry, which was (11) quite appropriate signs we are an industry (12) sponsored organization.  
 (13) Q The CTR did fund the research?  
 (14) A The CTR wrote the checks, but it was (15) industry money that funded the checks.  
 (16) Q So the CTR did not fund the projects of Theodore (17) D. Sterling?  
 (18) A You are saying it backwards now.  
 (19) The CTR was the funding agent. We (20) disbursed the funds. The funds were industry (21) funds.  
 (22) It was not a grant-in-aid and not a (23) contract. This was industry funding of a special (24) project through the resource's fiduciary (25) authority of the Council for Tobacco Research.

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(2) That is perfectly plain.  
 (3) Q Referring to this document, we have already gone (4) over the fifth article or research journal (5) publication called "Indirect Health Effects of (6) Relative Humidity in Indoor Environment," which (7) is the fifth publication on the list on page 1 of (8) Plaintiff's Exhibit 3, and there is a checkmark (9) by that because I put it there when I first (10) discussed it with you today so I would remember (11) that I had already discussed it.  
 (12) Looking at the rest of the list, for (13) example the third article on that first page, (14) "Building Illness," Occupational Health & Safety (15) Canada, it was published in Occupational Health (16) & Safety Canada in 1986, volume 2, was that a CTR (17) special project?  
 (18) A I don't know.  
 (19) Q On this list, Doctor, how many of these on this (20) list were CTR funded special projects or funded (21) in any way by the CTR?  
 (22) A None were funded by the CTR to my (23) knowledge. They were funded by the industry and (24) the CTR was the disbursing agent.  
 (25) Q Of those that are on this list on page one,

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(2) Doctor, how many of them do you know of, other (3) than the one you have already discussed, (4) "Indirect Health Effects of Relative Humidity,"  
 (5) how many of these were funded as special projects (6) of the CTR?  
 (7) A I have no idea. I could probably find out (8) by going back to the records, but I have no idea (9) off the top of my head.  
 (10) This is the first time I have seen this (11) list in the first place. In the second place, to (12) memorize some 40 or 50 or 60 publications and (13) tell you which ones we funded, is impossible for (14) my mental computer.  
 (15) Q You know that Dr. Sterling was funded by the CTR (16) special projects; correct?  
 (17) A He was funded by the industry and the CTR (18) was the disbursing agent for the funds he (19) received.  
 (20) Q And he was provided with millions of dollars;  
 (21) correct?  
 (22) A I don't know what the total amount was. He (23) was one of the long-term investigators funded by (24) special projects and his name appears many places (25) in the roster of special projects, but I have no

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(2) idea what the dollar volume was.  
 (3) Q You never looked that up?  
 (4) A I had no reason to.  
 (5) Q Have you ever been called upon to provide any (6) sworn testimony for any tobacco related issue (7) other than the depositions you have already (8) referred to?  
 (9) A You mean such as courtroom appearances or (10) affidavits?  
 (11) Q Anything.  
 (12) A Yes, affidavits.  
 (13) Q Other than affidavits, Doctor, have you been (14) called upon to--  
 (15) A Other than the depositions that you know (16) about?  
 (17) Q Right.  
 (18) A I have to ask counsel whether I have done (19) anything other than that. I don't know what (20) else.

- (21) MR. MERRITT: What else would there (22) be? Affidavits, depositions and trial.  
 (23) Do you have something else in mind?  
 (24) Q There are other possibilities. Can you recollect (25) any?

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- (2) A I don't know of any affidavits.  
 (3) Q Congressional testimony?  
 (4) A Yes, it's a matter of record. Yes.  
 (5) MR. MERRITT: I thought your question (6) related to litigation.  
 (7) MR. HOAG: No, it was not just (8) litigation.  
 (9) It was sworn statements in any tobacco (10) related issue other than the depositions we (11) have already discussed, so it was all (12) encompassing.  
 (13) Q So long as it was tobacco related and a sworn (14) statement, with that in mind, affidavits and (15) congressional testimony also?  
 (16) A Yes.  
 (17) MR. MERRITT: I should add he also was (18) called before the Grand Jury in the Eastern (19) District of New York.  
 (20) THE WITNESS: No.  
 (21) MR. MERRITT: You did not testify?  
 (22) THE WITNESS: No testimony, no (23) deposition. I talked with members of the (24) staff of the Attorney General.  
 (25) MR. MERRITT: I stand corrected. You

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- (2) remember better.  
 (3) It was an interview rather than sworn (4) testimony?  
 (5) THE WITNESS: Right, all very (6) pleasant.  
 (7) Q An informal interview with the District Attorney (8) for New York?  
 (9) A Yes.  
 (10) MR. MERRITT: U.S. attorney?  
 (11) A Eastern District.  
 (12) Q How long ago was that?  
 (13) A Four years.  
 (14) Q Do you know whether or not that was related to a (15) criminal investigation?  
 (16) A It was a preliminary investigation.  
 (17) A federal judge had raised an erroneous (18) question relative to 1,500 documents which he (19) attributed to the CTR. They were the stolen (20) documents from Brown & Williamson Tobacco. They (21) referred to CTR in some places, but they were not (22) CTR documents, and I think the U.S. attorney was (23) confused about it by the judge's statements, (24) Judge "Sorokin," and wanted clarification.  
 (25) And I spent the better part of a day in

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- (2) their offices at their invitation, but it was not (3) a subpoena and it was not a deposition and it was (4) an informal interview.  
 (5) Q Other than that, Doctor, that is the only (6) interview you had with any law enforcement agency (7) and anything related to tobacco?  
 (8) A Yes.  
 (9) Q The congressional testimony, what was that?  
 (10) A That was also by invitation. I voluntarily (11) testified before them.  
 (12) I must say I was treated extremely rudely (13) by our elected representatives, who clearly had a (14) different agenda than finding out the truth.

- (15) Q When did this occur?  
 (16) A 1993.  
 (17) Q Was this sworn testimony?  
 (18) A Yes.  
 (19) Q Okay.  
 (20) A It's publicly available.  
 (21) Q Who treated you in a rude manner?  
 (22) A Everyone on the panel except Mr. "Blyly."  
 (23) Q What panel was that?  
 (24) A It was the Waxman Subcommittee on Health.  
 (25) Q How long did your testimony last?

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- (2) A All day.  
 (3) Q Like from 9:00 in the morning until 5:00 at night (4) or 5:00 in the afternoon?  
 (5) A It started at about 10:00 in the morning (6) and it concluded about 5:00 in the afternoon, (7) 4:30.  
 (8) Q You were questioned by several people?  
 (9) A Yes, rudely.  
 (10) Q Were you represented by an attorney?  
 (11) A I was accompanied by attorneys, but I gave (12) my testimony alone and I got no formal (13) representation.  
 (14) Q Did you have a written statement prepared?  
 (15) A Yes, and it is a matter of public record as (16) well.  
 (17) Q Did you prepare the written statement yourself or (18) did somebody assist you?  
 (19) A In conjunction with our attorneys. I (20) related to them the facts; they put it into (21) acceptable form.  
 (22) I must say that during the time I read my (23) prepared statement the members of the panel were (24) out in the hall, presumably having a cigarette, (25) but they were not there and were not listening.

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- (2) Q You had a deposition taken in the Broin case on (3) November 29, 1993.  
 (4) Was your congressional testimony before (5) that?  
 (6) A Yes; it was in May of 1993.  
 (7) Q Are you familiar with the proposed--I will use (8) the term "global settlement"--between the tobacco (9) companies and the Attorneys General that I guess (10) congress is discussing right now?  
 (11) A Yes.  
 (12) Q What, if anything, if that settlement is (13) approved, will happen to the CTR?  
 (14) A Well, the settlement agreements to which (15) you refer is merely a recommendation from a (16) self-appointed committee of Attorneys General and (17) attorneys representing the tobacco industry.  
 (18) The Attorneys General made an unwarranted (19) and vicious attack on the Council and made (20) allegations of fraud and clearly did not (21) understand our mission or what it is we do, or (22) the fact that we provide \$20 million a year of (23) basic research funding for biomedical (24) investigators.  
 (25) And they have insisted that the Council for

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- (2) Tobacco Research be dissolved within 90 days of (3) implementation of legislation to that effect, but (4) it is simply a recommendation and I have no idea (5) how congress will respond to this and I have no (6) idea what the long-term results would be and I (7) think until congress acts on this, it is (8) premature to speculate on it.

(9) Q Are you in disagreement with that aspect of the (10) proposed global settlement?

(11) A I am in favor of a settlement because of (12) the various factors that are involved in all of (13) this realm of litigation.

(14) If indeed it is the wish of the congress (15) and therefore of the American people that \$20 (16) million a year of basic biomedical research (17) funding be eliminated, I have to go along with (18) that decision then.

(19) Q That would not necessarily call for the (20) elimination of the research.

(21) That would call for the elimination of the (22) CTR as the conduit for the research monies; (23) correct?

(24) A It would call for that, but I strongly (25) suspect that the industry would not seek to

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(2) replace the CTR.

(3) In fact, I think that would be counter to (4) the intentions of any such legislation, so I (5) think it is--we are penalizing the public and the (6) biomedical research community if we enact such (7) legislation.

(8) Q You believe if the proposed settlement agreement (9) as proposed at the moment is accepted, that it (10) will mean there is less money for biomedical (11) research?

(12) A Yes, by \$20 million annually, and so do (13) your investigators, believe that.

(14) Q When you say "your investigators," whose (15) investigators do you mean?

(16) A Our grantees, the recipients of the CTR (17) funding for their research.

(18) Q Those 1,500 documents you talked about, have you (19) reviewed any of those?

(20) A Some of those.

(21) Q Did you review them, some of them, prior to your (22) testimony before congress?

(23) A No, because I did not have access to them (24) then.

(25) I was provided with illegible mimeographed

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(2) copies of some of these documents by Mr. Waxman (3) and his associates at the time of my deposition.

(4) They were virtually unreadable at that (5) time, but since that time I have been provided (6) with legible copies of some of the documents.

(7) Q Have you read any depositions in any of the (8) cases, any of the tobacco related cases, (9) including Broin, Engle, any of the Attorneys (10) General cases?

(11) A Have I read any depositions from whom?

(12) Q From anyone, anyone's deposition other than your (13) own, in any of the cases, in any of the tobacco (14) related cases that you are aware of, and that (15) would include the Broin case, which is the flight (16) attendants, which is the Engle case, the one you (17) are being deposed on today?

(18) MR. HOAG: Is he in both Broin and (19) Engle as a defense witness?

(20) MR. MERRITT: He may be. I do not (21) know how the designation is.

(22) MR. HOAG: This deposition, he is (23) noticed for Broin and Engle or just Engle?

(24) MR. MERRITT: Just noticed for Engle.

(25) MR. HOAG: That is what I thought. I

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(2) just wanted to make sure.

(3) Q Those two cases or any of the AG, Attorneys (4) General cases, have you reviewed any of the (5) depositions in any of those cases?

(6) A I have reviewed some plaintiffs' (7) depositions and I have reviewed depositions of my (8) associate, Dr. McAllister.

(9) Q Aside from your associate--does he have a Ph.D., (10) Doctor?

(11) A Yes.

(12) Q --Dr. McAllister, did you review any other (13) depositions?

(14) A Not to my knowledge.

(15) Q Have you reviewed your own deposition?

(16) A Yes.

(17) Q How long ago did you review your own deposition?

(18) By "your own," I mean the one taken in (19) November of 1993 in the Broin case. When did you (20) review that?

(21) A Last week.

(22) Q Did you read it all?

(23) A No; I got tired of listening to Stanley.

(24) Q It is 300-plus pages. Was there any part of it (25) that you read, Doctor, that you felt you

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(2) testimony would be different today than it was (3) then?

(4) A I expect it would because I have learned (5) things in three or four years, I am happy to say.

(6) Q When you say "things," what types of things are (7) you referring to?

(8) A I have a little better insight into our own (9) operation and the historical aspects of the CTR (10) and I have had a chance to review a good many (11) other documents, largely those that plaintiffs (12) have provided.

(13) Q You talked a little earlier about Microbiological (14) Associates and the contract the CTR had with (15) them.

(16) Did the CTR to your knowledge express a (17) lack of interest in certain types of research (18) that Microbiological Associates suggested, (19) Doctor?

(20) MR. MERRITT: Objection to the form.

(21) A First of all, I was not at the CTR at the (22) time of this project.

(23) It was a contract, as I understand it, and (24) there were probably one or two other contracts (25) for research. I don't know what exactly took

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(2) place, but I know there was a great deal of money (3) spent for nonproductive research and ultimately (4) it was the decision of the scientific advisory (5) board to abandon the project.

(6) Microbiological Associates were asked to (7) provide a financial report, which was published.

(8) Q Did you at any time become aware of some (9) communication from Mr. Pepples? Who is he, (10) Doctor?

(11) A Ernest Pepples is senior executive officer (12) of Brown & Williamson Tobacco Company.

(13) Q Do you recall reading any document where Mr. (14) Pepples was concerned about tests that are (15) so-called red-light tests?

(16) A I remember reading that. I was not sure (17) what a "red-light test" was.

(18) Do you know what it is?

(19) Q Let me ask you a question and you tell me if this (20) is any part of your understanding of what a (21) red-light test might be.  
(22) Is it your understanding that red-light (23) tests are tests that are used to identify harmful (24) ingredients in substances and products which are (25) available to the consuming public?

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(2) A No.  
(3) As I said, I really am not sure what the (4) term meant, "red-light test." I am still not (5) sure. I should ask Mr. Pepples.  
(6) Q Let me follow up and ask you this: To your (7) knowledge has the CTR ever funded research to (8) identify harmful ingredients and substances in (9) tobacco?  
(10) A I can't answer that.  
(11) During my tenure that has not been the (12) case, but a great deal of research has been done (13) in that area trying to identify potential harmful (14) constituents of smoke, particulates, body matter.  
(15) It may number as many as 3,000 substances I (16) am told, and this research was done I believe (17) primarily by the industry.  
(18) It's a matter of public record and (19) knowledge. The CTR may have funded some similar (20) research in the early days, but I am not aware of (21) it.  
(22) Q Is it your understanding that all of the research (23) that the industry, meaning the tobacco industry, (24) does regarding the components of tobacco smoke is (25) public knowledge?

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(2) A I can't say that categorically, but (3) certainly if I know about it I think most people (4) will know about it.  
(5) Q So you do not--  
(6) A Smoke of all sorts has a vast number of (7) particulates, substances and there are the (8) so-called tars and there is nicotine in tobacco (9) smoke.  
(10) We are talking about a vast array of (11) things.  
(12) Q Are you familiar with tobacco-specific (13) nitrosamines?  
(14) A I am familiar with nitrosamines.  
(15) Q Are you familiar with the tobacco-specific (16) nitrosamines?  
(17) A I am not sure there are specific (18) nitrosamines, because nitrosamines have a variety (19) of sources and nitrosamines are known to be (20) potentially harmful substances and there are (21) nitrosamines in tobacco.  
(22) Q They are known to be carcinogenic substances, (23) Doctor?  
(24) A They may be, they may not be.  
(25) Q You do not know?

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(2) A Not all the animals who are exposed to it (3) develop signs of malignancy. It's the unusual (4) one that does.  
(5) Q You are aware of the "Mall" Study showing (6) nitrosamines to be carcinogenic, Doctor; is that (7) correct?  
(8) A Correct, but not universally so.  
(9) Q Are you familiar with the NNK nitrosamine, Dr.  
(10) Glenn?  
(11) A Yes.  
(12) Q Has the CTR funded any research concerning the (13) NNK nitrosamine?

(14) A Nitrosamine research has been supported.  
(15) I cannot tell you specifically whether it (16) was NNK. There has been none done recently. I (17) think that issue is pretty well understood.  
(18) Q What is your understanding of what is pretty well (19) understood?  
(20) A Everybody understands there is a potential (21) risk factor in exposure to all nitrosamines.  
(22) Q Has the CTR ever funded any research to measure (23) the level of nitrosamines in tobacco smoke, (24) Doctor?  
(25) A I can't tell you that, but I don't think

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(2) 50.  
(3) You understand again, that research that we (4) fund is that which comes to us in the form of an (5) application from an investigator.  
(6) If nobody applies to us for research in a (7) given area, no grants are given in that area.  
(8) It's not as if the CTR were functioning as an (9) independent agent.  
(10) Q Do scientists who apply for funding have a basic (11) understanding of what types of research a funding (12) source will accept and what types of research a (13) funding source is likely to reject?  
(14) A I don't think so. I don't think so.  
(15) Specifically we get some grant applications (16) in areas that are of no interest to us and not of (17) basic biomedical-the answer is no, they do not (18) understand that, but the scientific community (19) clearly understands that we are interested in (20) basic molecular and cellular biology.  
(21) By word of mouth in the community (22) scientists learn what sorts of projects we have (23) funded.  
(24) We make available to every inquirer a copy (25) of the annual report which gives him guidelines

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(2) that relate to which research has been of (3) interest and which we have supported.  
(4) The scientific community clearly would not (5) apply to the National Heart Institute nor (6) Research on Joint Diseases, so yes, the (7) scientific community is fairly sophisticated, but (8) no, they do not know of any limitations nor do we (9) make any public statements about what we will (10) support other than to say that our interest is in (11) tobacco and health.  
(12) Q Is it well-known in the scientific community that (13) the CTR is not interested in funding research (14) that directly would link tobacco to any disease, (15) Doctor?  
(16) A No, sir, that is not true at all.  
(17) On the contrary, as I explained this (18) morning, we have funded probably some 400 (19) projects that relate tobacco to a disease process (20) or abnormality that might lead to disease.  
(21) Q That is using your SAB broad definition of what (22) is related to tobacco; correct?  
(23) MR. MERRITT: Objection to the form.  
(24) A It is not what is related to tobacco. It (25) is what is related to disease; why does the cell

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(2) go wrong in the first place and the issue of (3) whether tobacco use or smoking adds a risk factor (4) or facilitates a genetic abnormality to induce (5) disease.  
(6) Q Has the CTR ever done any studies, any

deposition (7) studies, employing laboratory carcinogens (8) aerosolized in smoke?  
 (9) Let me try this again. Has the CTR ever (10) funded any research regarding deposition studies (11) employing laboratory carcinogens aerosolized in (12) smoke?

(13) A What is a deposition study?

(14) Q Do you know?

(15) A No.

(16) Q I am just asking the questions.

(17) You do not know what a deposition study is, (18) Doctor?

(19) A No. I am giving a deposition now, but I (20) don't know what a deposition study is.

(21) Maybe it's a study of all of the (22) depositions I have given.

(23) Q Does it relate to aerosolized smoke employing (24) laboratory carcinogens?

(25) A I know what a carcinogen is. It's a

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(2) substance that may or may not induce cellular (3) transformation to a malignant state.  
 (4) Aerosols, I know they are particles that (5) are in the air, but I don't know what a (6) deposition study is.

(7) Q Has the CTR ever funded any studies of (8) biochemical markers aimed at testing the possible (9) cancer promotional effects of whole cigarette (10) smoke condensate and its various fractions?

(11) A I don't know.

(12) I think we most certainly would be (13) interested in that if an investigator would come (14) forward with a proposal.

(15) Q Has the CTR ever funded initiation studies, in (16) particular, Doctor, those using DNA damage (17) assays?

(18) A Well, we have funded a lot of research (19) relative to DNA and DNA abnormalities.

(20) I can't tell you specifically related to (21) that question, but we have to remember that (22) my corporate memory goes back about ten years.

(23) Everything I know before that time is pretty much (24) on the basis of the records I have been fortunate (25) to see or information given to me by colleagues

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(2) who have had longer tenure with the CTR.

(3) The answer to your question specifically (4) about the DNA, yes, we have funded some DNA (5) research.

(6) Q Has the CTR ever funded any studies aimed at the (7) connection and connotation of possible (8) carcinogenic metabolites in urine?

(9) A I don't know, but there has been a lot of (10) work done in that area.

(11) Whether the CTR funded any of it in years (12) past, I don't know.

(13) Q During the ten years--you have worked there for (14) ten years; have you not?

(15) A We have not had an application in that (16) area. The closest thing we had is ID of genetic (17) abnormalities in bladder and prostate cancer.

(18) But again, I go back to what I said before, (19) this morning, studies of metabolites and cellular (20) abnormalities in the urine are pretty well (21) established.

(22) These are now normal laboratory tests, so (23) they do not fall in the category of research (24) anymore but more in the realm of clinical (25) diagnosis.

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(2) MR. HOAG: Off the record.

(3) (Whereupon, there was a discussion (4) off the record.)

(5) (Whereupon, a brief recess was taken.)

(6) CONTINUED EXAMINATION (7) BY MR. HOAG:

(8) Q Referring to Plaintiff's Exhibit 3, which you (9) have in front of you right now, the first article (10) on that first page entitled "Comparison of (11) Children's and Wives' Health in Families of (12) Blue-Collar and Professional/Managerial Workers,"

(13) do you know anything about that article, Dr.

(14) Glenn?

(15) A No.

(16) Q Do you know whether or not it has to do with (17) tobacco and health?

(18) A No, sir.

(19) Q And you do not know whether that was funded by a (20) special project or not?

(21) A No.

(22) Q If we looked at the article it would have the (23) disclosure if it was?

(24) A Yes.

(25) Q Do you know if any of these articles that are on

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(2) this list, on these five pages, if any of these (3) were actually funded through the independent (4) scientific advisory board process?

(5) A I don't know whether Dr. Sterling ever (6) applied for a grant or not. He may have in the (7) earlier days, but I think most of the support he (8) got certainly was by special projects.

(9) Q The CTR still has the documents to show how many (10) special projects he had funded and how much was (11) paid to him; correct?

(12) A Yes.

(13) Q Moving to the second page, the first article on (14) that page says "Sick Buildings: Case studies of (15) tight building syndrome and indoor air quality (16) investigations in modern office buildings."

(17) Do you know if that research has to do with (18) tobacco and health?

(19) A I don't know.

(20) The sick building application is applied in (21) many circumstances, Legionnaire's disease for (22) example, but environmental smoke has also been (23) studied in the sick building syndrome.

(24) I don't know if that has any relation or (25) not.

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(2) Q Do you know what "tight building syndrome" is, (3) Doctor?

(4) A No.

(5) Q Moving to the fifth article on that second page, (6) "The Economics and Politics in the Assessment of (7) Causes of Building Illness," do you know if that (8) has anything to do with tobacco and health, (9) Doctor?

(10) A I do not.

(11) Q Moving to the seventh article down on the second (12) page, "Building Illness in the White-Collar (13) Workplace," do you know if that has to do with (14) tobacco and health?

(15) A No.

(16) Q The next article, "The Impact of Different (17) Ventilation Levels and Fluorescent Lighting Types (18) on Building Illness, an Experimental Study," do (19) you

know if that has anything to do with tobacco (20) and health?

(21) A No.

(22) By way of explanation, I have not read any (23) of these papers I have seen so far.

(24) Q Going down to the "Use of Gas Ranges for Cooking (25) and Heating in Urban Dwellings," do you know if

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(2) that has anything to do with tobacco and health, (3) Doctor?

(4) A No.

(5) Q Page three at the top, "Carbon Monoxide Levels in (6) Kitchens and Homes with Gas Cookers," do you know (7) if that has anything do to with tobacco and (8) health?

(9) A No.

(10) Q And just moving along to all of the articles on (11) pages three, four, five and six, do you know if (12) those articles have anything to do with tobacco (13) and health?

(14) A No.

(15) MR. HOAG: Let's mark this as (16) Plaintiff's Exhibit 4 for Identification, (17) please.

(18) (Whereupon, document was marked (19) as Plaintiff's Exhibit 4 for (20) Identification as of this date.)

(21) Q I am showing you what has been marked as (22) Plaintiff's Exhibit 4, which is a four-page (23) document.

(24) At the top of the document it says "From (25) the Council for Tobacco Research," and it says

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(2) "For Release Monday August 17, 1964," and the (3) title is "Scientific Director C.C. Little Reports (4) a Decade of Tobacco Health Research."

(5) Have you ever seen that document before, (6) Dr. Glenn?

(7) A Yes, I have.

(8) Q When did you last see that document?

(9) A Several months ago.

(10) Q Was that the first time you saw it, several (11) months ago?

(12) A Yes.

(13) Q Where did you see it?

(14) A It was provided to me by counsel, having (15) retrieved it from our files.

(16) Q From the CTR files?

(17) A Yes.

(18) Q Is that a CTR document?

(19) A Press release from the CTR.

(20) Q That is found in the CTR's own files; is that (21) correct?

(22) A Correct.

(23) Q You said yes?

(24) A Yes.

(25) Q The fourth paragraph down says "the Council's

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(2) scientific director states in his annual report (3) that after ten years the fact remains that (4) knowledge is insufficient either to provide (5) adequate proof of any hypothesis or to define the (6) basic mechanisms of health and disease with which (7) we are concerned."

(8) What I would like to ask you related to (9) that statement, Doctor, is this: Do you agree (10) today, which is August 4, 1997, "that knowledge (11) is

insufficient either to provide adequate proof (12) of any hypothesis or to define the basic (13) mechanisms of health and disease with which we (14) are concerned," and that concern is directly (15) related to tobacco?

(16) A What is the question?

(17) Q Do you agree with that?

(18) A Well--

(19) Q Is that is still the case?

(20) A This statement was made in 1964 and in 1964

(21) I think that was a very accurate statement.

(22) We know a lot more than we did 33 years (23) ago, but I don't know if all of the answers are (24) in yet.

(25) Q Is the information still insufficient to provide

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(2) adequate proof of any hypothesis?

(3) A To prove it, yes, to relate smoking and (4) health.

(5) Certainly we have got a lot more (6) information than we had 33 years ago.

(7) Q Is the information still insufficient to define (8) the basic mechanisms of health and disease with (9) relationship to tobacco and health?

(10) A Yes.

(11) That is what we have been talking about all (12) day, fundamental disease mechanisms, cell (13) regulation.

(14) MR. HOAG: I will mark this document (15) as Plaintiff's Exhibit 5 for (16) Identification.

(17) (Whereupon, document was marked (18) as Plaintiff's Exhibit 5 for (19) Identification as of this date.)

(20) Q I will show you a document that has been marked (21) as Plaintiff's Exhibit 5 for this deposition.

(22) At the top of the document it says "From (23) the Council for Tobacco Research - U.S.A.," and (24) it says "Summary of the Testimony of Robert C.

(25) Hockett, Ph.D. before the Senate Commerce

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(2) Committee, April 1965."

(3) Have you ever seen that document before, (4) Doctor?

(5) A Yes.

(6) Q When did you first see it?

(7) A Several months ago.

(8) Q How did you come to see it?

(9) A Again, from our files.

(10) Q From the CTR files?

(11) A Yes.

(12) Q Did somebody provide to you?

(13) A Counsel provided it.

(14) Q This is kept regularly in the regular course of (15) business of the CTR, this document?

(16) A I don't understand the question.

(17) Q Does the CTR keep these files which contain all (18) of the press releases?

(19) A Yes.

(20) Q And that was one of the press releases in the (21) CTR's files?

(22) A As far as I know.

(23) Q Referring to the fourth paragraph of the (24) document, it says "A major difficulty with (25) attempts to deduce a causal connection from the

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(2) statistical association between cigarette smoking (3) and the incidence of various types of cancer, (4) especially carcinoma of the lung, is that there (5) are a

member of other non-causal reasons for the (6) existence of such an association which can be (7) postulated and must be excluded before any (8) judgment can be reached."

(9) As we sit here today, August 4, 1997, do (10) you believe that that statement is still (11) accurate?

(12) A This was 32 years ago.

(13) Q True.

(14) A And not too far off the target. We have (15) learned a lot more; we have come a lot further in (16) explaining the mechanisms of disease.

(17) At the time Dr. Hockett made this statement (18) DNA and RNA had not been elaborated. Quick & (19) Watson had not been identified. We did not know (20) about the genetics of disease.

(21) So I think that was a very honest statement (22) at the time. We certainly are a lot closer to (23) understanding and we certainly know more about (24) the relationship between smoking and various (25) types of cancer, just as he specified, than we

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(2) did before.

(3) Q What in this quotation that I have read would you (4) change, if you changed any of it, today, Dr. (5) Glenn?

(6) A I would change a lot of it. He would not (7) have said these words today at all, but 32 years (8) ago--

(9) Q Okay; let me break it down.

(10) Do you agree right now as we sit here today (11) that there are a number of other non-causal (12) reasons for the existence of the association (13) between carcinoma of the lung and tobacco smoke (14) which can be postulated and must be excluded (15) before any judgement as to cause can be reached, (16) Doctor?

(17) A We have to know the radon, smog, (18) particulate matter. There are a lot of things (19) that should be separated out. That is a very (20) accurate statement.

(21) Q You still think it is an accurate statement (22) today?

(23) A I know it is.

(24) Q Moving to the third page, bottom paragraph of the (25) exhibit. Plaintiff's Exhibit 5, the third

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(2) sentence on the bottom paragraph says "In the (3) absence of corroboratory clinical and (4) experimental evidence, judgments that cigarette (5) smoking is a major factor contributing (6) importantly to mortality would seem to go beyond (7) the realm of scientific conclusions, and to (8) contain a considerable element of guess and (9) gamble."

(10) As we sit here today, August 4, 1997, do (11) you believe that that statement is accurate (12) today?

(13) A No.

(14) Q What in that statement is inaccurate today, (15) Doctor?

(16) A We have got a lot more epidemiology and (17) statistical evidence of association of smoking as (18) a risk factor in lung cancer and other cancers as (19) well, so I don't think we can make a statement (20) today that cigarette smoke is not a major factor.

(21) It's a risk factor and we all accept that (22) today.

(23) Q You believe that cigarette smoking is a major (24) factor important to mortality?

(25) A I would have said risk factor. I think at

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(2) the time Dr. Hockett made this statement that the (3) votes were not all in, so I don't fault Dr.

(4) Hockett for that statement made 32 years ago.

(5) Q What he says 32 years ago on the top of that same (6) paragraph, "Statisticians agree that causation (7) cannot be inferred reliably from association," do (8) you agree with that?

(9) A It was true then.

(10) Q Is it true now?

(11) A I don't think so. I think we can infer (12) risk factors on a statistical basis. I don't (13) agree with what he said 32 years ago.

(14) Q Do you agree right now as we sit here now that (15) causation cannot be inferred reliably from (16) association?

(17) A What do you mean by "cause"?

(18) Q What is stated right here in this document 33 (19) years ago.

(20) A If you're using your definition of (21) causation, that is one thing. The scientific (22) term causation is quite another.

(23) Q I will read what this paragraph says, the first (24) sentence--

(25) A What do you and Dr. Hockett mean by

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(2) "causation"?

(3) Q Let me read what it says and you can answer (4) whatever way you want.

(5) The first sentence in that last paragraph (6) states "Statisticians agree that causation cannot (7) be inferred reliably from association."

(8) Do you agree with that today as we speak, (9) Doctor?

(10) A You have taken that out of context.

(11) The next statement is corroboration is (12) essential. He wanted to see further studies and (13) I think we have over 32 years established the (14) risk factor of smoking, we established it in the (15) minds of the general public as well as in the (16) medical profession. No one can escape.

(17) Q Such that causation can be inferred reliably, (18) Doctor?

(19) A Not causation. The cause of lung cancer or (20) any other malignancy is cellular derangement and (21) deregulation and what brings that about may be a (22) number of risk factors, including genetics, so I (23) don't disagree with what Dr. Hockett said 32 (24) years ago, but I would cast it in a different (25) light now in '97.

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(2) Q Do you still agree that causation cannot be (3) inferred?

(4) A Yes, if you're using the word "cause" in (5) the scientific sense.

(6) Q Going back to Exhibit 4, which is a press (7) release, Council for Tobacco Research, for (8) release Monday August 17, 1964, how frequently (9) did the CTR send out releases, news releases, (10) Doctor?

(11) MR. MERRITT: In 1964 or at the (12) present time?

(13) MR. HOAG: 1964.

(14) Q Do you know?

(15) A I have no idea.

(16) Q Does it still continue to send out news releases,

(17) Doctor?

(18) A Once a year when we publish the annual (19) report.

- (20) Q When the CTR sends out--  
 (21) A That is what this relates to. It's about (22) the annual report, so for all I know there was (23) only one issued that year.  
 (24) Q When the CTR sends out news releases that say (25) that causation of disease related to tobacco has

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- (2) not been proven, does that in any way encourage  
 (3) the general public to believe that these (4) researchers are in fact saying to them we do not (5) know if this is going to do any harm, smoking (6) cigarettes?  
 (7) MR. MERRITT: Objection to the form.  
 (8) A I think that is apples and oranges.  
 (9) The scientific cause of disease is one (10) thing, smoking is another, and we know it's a (11) risk factor.  
 (12) We have been over that. If you say cause (13) in the lay sense, does smoking cause lung cancer (14) in the lay sense and the non-scientific sense, I (15) would have to say yes, it's a causal factor.  
 (16) But it does not mean that two plus two is (17) four. It's not as simple as the tubercle (18) bacillus causing tuberculosis.  
 (19) Q This is common sense?  
 (20) A Common sense tells me that smoking has (21) serious risk factors involved.  
 (22) Q Common sense, does it tell you that smoking (23) cigarettes causes lung cancer?  
 (24) A No. Smoking may contribute to the (25) development of lung cancer, but there may be a

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- (2) number of other factors involved as well.  
 (3) Genetics certainly could be incriminating.  
 (4) Q So the Surgeon General's warning label on (5) cigarette packages--  
 (6) A Is written in the lay sense and uses the (7) term "cause" in the lay sense and I don't know (8) how I can be any clearer and I don't disagree (9) with it.  
 (10) It's an appropriate warning. It tells (11) people there are risks involved here, as if they (12) already did not know it.  
 (13) Q You agree with that then, you agree with the  
 (14) Surgeon General's warning that says cigarette (15) smoking causes heart disease, emphysema, et (16) cetera?  
 (17) A I agree in the lay sense, not scientific (18) evidence.  
 (19) Q When we go back to 1964 when this news release (20) was put out, August 17, 1964, in the lay sense (21) would you agree that in 1964 it was established (22) that cigarette smoking causes lung cancer in the (23) lay sense?  
 (24) A Not in '64.  
 (25) I was smoking in '64 and so were most of my

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- (2) colleagues and the evidence then was so imminent,  
 (3) it really had not been a general movement of the  
 (4) profession to get people to modulate their (5) smoking habits.  
 (6) Q What year was it established in a lay sense that  
 (7) cigarette smoking causes lung cancer?  
 (8) MR. MERRITT: Objection to the form.  
 (9) A Well, I object to the use of the word (10) "cause" without a definition.  
 (11) Q You have been using it in the lay sense. I am  
 (12) using your words in the lay sense.

- (13) What year was it established?  
 (14) A It was a gradual recognition that through (15) epidemic studies and other scientific evidence, (16) that there was a risk associated with smoking (17) that would predispose people to lung cancer, (18) emphysema, chronic bronchitis, pneumonitis, (19) varieties of diseases, but that evidence was (20) gradual.  
 (21) Nothing happens overnight. There is no (22) date that things happen. It's a gradual (23) evolution.  
 (24) Q Was it established in 1970? Was it established  
 (25) within a lay person's definition that smoking

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- (2) caused lung cancer?  
 (3) A Same answer.  
 (4) Q 1980?  
 (5) A Same answer.  
 (6) Q 1990?  
 (7) A Same answer.  
 (8) Q 1997?  
 (9) A Same answer.  
 (10) Q So you cannot give any date today that cigarette  
 (11) smoking causes cancer?  
 (12) A It's a gradual evolution of thought, but (13) the term "coffin nail" as an acronym for (14) cigarettes was used in 1890.  
 (15) Q Did the CTR ever use the term "coffin nail" in  
 (16) any of its news releases?  
 (17) A No.  
 (18) Q Has the CTR ever said publicly in a lay person's  
 (19) sense that lung cancer and tobacco smoke, the (20) relationship between the two has been proven, (21) Doctor?  
 (22) A No. We have never denied it either.  
 (23) Q You have published news releases that tell the  
 (24) American public that causation has not been (25) proven?

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- (2) MR. MERRITT: Objection.  
 (3) A In the scientific sense.  
 (4) Q And you, the CTR, has never written a news (5) release saying but in a lay person's sense the (6) evidence is so overwhelming that causation has (7) been proven; correct?  
 (8) A I can't say what the CTR's press releases (9) said from time in memorial.  
 (10) I can tell you what they said since I have (11) been in charge.  
 (12) Q Have you ever approved of a press release that  
 (13) says tobacco smoking causes lung cancer?  
 (14) A I don't have to. Most lay people will (15) accept the risk factor of smoking. It's a (16) personal decision and they decide to do it.  
 (17) Q Are you planning on putting out a press release  
 (18) that says in a lay person's sense let's be (19) straightforward about this, cigarettes smoking (20) causes lung cancer?  
 (21) A No, I don't plan a press release of that (22) sort.  
 (23) Q Of course, every reputable scientific (24) organization that looks into this subject has (25) said in a straightforward way that cigarette

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- (2) smoking causes lung cancer. Are you aware of (3) that?  
 (4) A No, sir, because reputable scientific (5) organizations would have to say we do not know (6)

what the factors are that make cigarettes a risk (7) factor. We know the statistical association.  
 (8) MR. HOAG: I would like to get this (9) marked, please, as Plaintiff's Exhibit 6 (10) for Identification.  
 (11) (Whereupon, document was marked (12) as Plaintiff's Exhibit 6 for (13) Identification as of this date.)  
 (14) Q This is Plaintiff's Exhibit 6.  
 (15) A Yes.  
 (16) Q Referring to Plaintiff's Exhibit 6, which is an (17) article entitled "Smoking Disease Links Continue (18) to Lack Scientific Proof," and at the bottom (19) there is a date there October 1970, have you ever (20) seen that before?  
 (21) A No.  
 (22) Q Before you just looked at it now you have never (23) seen the before?  
 (24) A I have never seen it before this minute, (25) no.

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(2) Q Do you know who Robert C. Hockett is?  
 (3) A Former scientific director for the CTR.  
 (4) Q Referring to the second page of this document,  
 (5) the first column, second full paragraph says (6) "through the years a considerable number of (7) published studies by independent scientists raise (8) questions concerning the validity of various (9) claims that smoking has actually been shown to be (10) a health hazard."  
 (11) To your knowledge was that a true and (12) accurate statement in 1970?  
 (13) A I think it was, because there were a number (14) of epidemiological studies that questioned the (15) studies. Evolution of thought was a slow (16) process.  
 (17) Q In 1970 a member of the general public reading (18) this article would be led to believe that there (19) is really a question as to whether cigarette (20) smoking is any kind of a health hazard, Doctor; (21) is that correct?  
 (22) MR. MERRITT: Objection to the form.  
 (23) A I don't know what the general public would (24) think. You have to put me inside somebody head's (25) 27 years ago. I don't know what they would

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(2) think.  
 (3) Q You just said in 1970 as far as you believed that  
 (4) it was not established that cigarette smoking was (5) even any kind of a health hazard.  
 (6) A I did not say that.  
 (7) MR. MERRITT: Objection to the form.  
 (8) A I said there was a gradual evolution of (9) recognition of the risks associated with smoking (10) and in '70 that was a part of the gradual (11) evolution.  
 (12) Q Do you believe that still as we speak today, (13) August 4, 1997, that there is a considerable (14) number of published studies by independent (15) scientists that raise the question of various (16) claims that smoking has actually been shown to be (17) a health hazard?  
 (18) A Do I believe that today?  
 (19) Q Yes.  
 (20) A No, sir.  
 (21) Q Do you believe it is an established scientific (22) fact that smoking is a health hazard?  
 (23) A Yes, sir, and it's well known to all of us (24) today.  
 (25) Q Has the CTR ever published any news release or

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(2) any public statements of any kind saying that it (3) is an established scientific fact that smoking (4) cigarettes is a health hazard?  
 (5) A I don't know whether they have or not.  
 (6) Q In the ten years you have been working there have (7) they?  
 (8) A No. This is part of our general public (9) information.  
 (10) Q When did you plan to provide this information to (11) the general public?  
 (12) A I don't think I am under any obligation to (13) provide it if they already know it.  
 (14) MR. HOAG: Mark this, please, as (15) Plaintiff's Exhibit 7 for Identification.  
 (16) (Whereupon, document was marked (17) as Plaintiff's Exhibit 7 for (18) Identification as of this date.)  
 (19) Q I am showing you what has been marked as (20) Plaintiff's Exhibit 7.  
 (21) Exhibit 7 is a document with the title at (22) the top "Council for Tobacco Research - U.S.A.,"  
 (23) and is dated December 28, 1970.  
 (24) Have you ever seen that before?  
 (25) A Yes.

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(2) Q When was the first time you saw it?  
 (3) A I can't tell you. Some months back.  
 (4) Q Is that a document that was in the CTR's files,  
 (5) Doctor?  
 (6) A Yes.  
 (7) Q Is this a CTR document?  
 (8) A Yes.  
 (9) Q The letter states, and I will read it, "This (10) letter will confirm the agreement among the (11) Council for Tobacco Research," and then it lists (12) all of the tobacco companies, "pertaining to the (13) operation of an information storage and retrieval (14) system for the lawyers of these five companies."  
 (15) Are you familiar with the existence of an (16) information storage and retrieval system of the (17) five named tobacco companies?  
 (18) A Yes. It's called the literature retrieval (19) service.  
 (20) Q Was all of that literature available to the (21) general public?  
 (22) A Yes.  
 (23) Q Was any of the literature just literature for the  
 (24) tobacco industry?  
 (25) A I am sure you know that I had no

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(2) involvement with this, so what I have to tell you  
 (3) about what I know is based on what I have been  
 (4) told and what I have learned from documents such  
 (5) as this.  
 (6) I think the literature or information (7) retrieval service was designed to copy or (8) abstract information in the medical literature (9) relative to issues of smoking and health and it (10) was done as a sort of central repository as a (11) convenience to the companies.  
 (12) They paid for it. The CTR housed the (13) operation for a period of time.  
 (14) Q For how long a period of time did the CTR house (15) it?  
 (16) A I forgot the number of years.  
 (17) Q If a member of the general public came in and  
 (18) said I would like to see this, would they be able

(19) to do so back in 1970?  
 (20) A I have no idea.  
 (21) Q Do you know if a member of the general public  
 (22) ever came in during the time this was in (23)  
 existence at the CTR and said can I see these (24) files,  
 if they would have been provided with (25) access to  
 those files?

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(2) A I am sure under appropriate circumstances (3)  
 they would have, but none of the literature and (4)  
 information that was accumulated was of a secret (5)  
 nature.  
 (6) This was from the literature that was (7) available  
 to the public. You could go to the (8) Library of  
 Congress or the New York Public (9) Library, and the  
 medical library at NYU or (10) Columbia and find the  
 same information. This was (11) just a collating thing.  
 (12) Q Every part of this was just public documents that  
 (13) were available generally to anyone?  
 (14) A As I understand.  
 (15) MR. MERRITT: Objection to the form.  
 (16) Q The CTR was paid as is outlined in here a  
 certain (17) amount of money to perform this service for  
 the (18) tobacco companies?  
 (19) A As I understand.  
 (20) Q When did that end; do you know?  
 (21) A I can't tell you.  
 (22) Q Did it end at some point?  
 (23) A At some point before my time.  
 (24) Q Does the CTR still have those documents?  
 (25) A No. The operation was moved out of the

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(2) CTR.  
 (3) Q Where was it moved?  
 (4) A I can't tell you that.  
 (5) Q You do not know why it was moved?  
 (6) A Well, it was a different operation and it (7) was  
 not a part of the CTR mission.  
 (8) It was just recognized that this was an (9)  
 additional burden on the CTR. I guess that was (10)  
 the real reason it was moved.  
 (11) MR. HOAG: Mark this as Plaintiff's (12) Exhibit 8  
 for Identification, please.  
 (13) (Whereupon, document was marked (14) as Plaintiff's  
 Exhibit 8 for (15) Identification as of this date.)  
 (16) Q I will show you a document marked as Plaintiff's  
 (17) Exhibit 8, which is a letter to Addison Yeaman, (18)  
 Chairman and President for the Counsel for (19) Tobacco  
 Research from Robert K. Hermann, Chairman (20) and  
 Chief Executive Officer of American Brands, (21)  
 Incorporated.  
 (22) Have you ever seen this document before, (23)  
 Doctor?  
 (24) A Yes.  
 (25) Q Is this from the CTR files?

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(2) A I don't know that. It was provided by (3)  
 counsel as a plaintiff's exhibit.  
 (4) Q This is correspondence to the CTR; is that (5)  
 correct?  
 (6) A Correct.  
 (7) Q And the CTR keeps in its files all  
 correspondence (8) that it receives?  
 (9) A As far as I know it may be there. I don't (10)  
 know what the source of the document is. It came (11)

from outside I think.

(12) Q But as far as you know this is a document that  
 is (13) in the CTR's files?  
 (14) A As far as I know it is.  
 (15) Q Do you know who Addison Yeaman is?  
 (16) A Former chairman of the board and president (17)  
 of the Council for Tobacco Research.  
 (18) Q Did you know him?  
 (19) A No, sir.  
 (20) Q Did you ever meet him?  
 (21) A He died recently.  
 (22) Q Did you ever know him?  
 (23) A No, sir.  
 (24) Q Robert K. Hermann, did you know him?  
 (25) A No, sir.

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(2) Q Did you know him to be the chairman and chief  
 (3) executive officer of American Brands, (4)  
 Incorporated?  
 (5) A I recognize his name.  
 (6) Q Do you know how long he was the chief  
 executive (7) officer of American Brands, Incorporated?  
 (8) A No, sir.  
 (9) Q Was American Brands, Incorporated in December  
 of (10) 1977 one of the tobacco companies that funded  
 the (11) Council for Tobacco Research?  
 (12) A Yes.  
 (13) Q You said you saw this for the first time a few  
 (14) months ago?  
 (15) A Yes.  
 (16) Q You were handed this to look at during a (17)  
 deposition or at some other time?  
 (18) A No. Counsel provided me with documents (19)  
 that had surfaced through plaintiffs and I (20) reviewed  
 selected documents that they provided to (21) me.  
 (22) Q In this first paragraph Mr. Hermann is talking (23)  
 about briefly the history of the Council for (24) Tobacco  
 Research and the fact that the tobacco (25) industry  
 research committee was established in

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(2) 1954 with the pledge in full-page advertisements (3)  
 in a document called "Frank Statement to (4) Cigarette  
 Smokers"; is that correct?  
 (5) A Correct.  
 (6) Q And that ad specifically said that "a scientific (7)  
 advisory board of outstanding doctors, scientists (8) and  
 educators has complete and free rein in (9) directing  
 the research program and awarding the (10) money for  
 grants"; is that correct?  
 (11) A Correct.  
 (12) Q And you have received that frank statement; (13)  
 correct?  
 (14) A Yes.  
 (15) Q And you agree that that accurately reflects a (16)  
 portion of what was in the frank statement; is (17) that  
 correct?  
 (18) A Yes.  
 (19) Q He goes on to say in his letter to Mr. Yeaman  
 (20) "this we can no longer say since what is called (21)  
 directed or contract research has been brought (22) into  
 the picture."  
 (23) Do you agree with him, Doctor, that it was (24) no  
 longer possible for the Council for Tobacco (25)  
 Research to say that the Council had free rein

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(2) because directed or contract research has been (3) brought into the picture?  
 (4) A I think he is referring to special (5) projects.  
 (6) Contract research that was done under the (7) scientific board was still a very independent (8) operation.  
 (9) I think Mr. Hermann here in his letter to (10) Mr. Yeaman is referring to special projects.  
 (11) Q Do you agree with what he is saying, that the (12) tobacco industry can no longer say that the (13) Council for Tobacco Research has free rein in (14) directing its research program?  
 (15) A Well, I don't think that statement has been (16) violated.  
 (17) The scientific advisory board still had (18) free rein in directing the research program and (19) awarding the money for grants, but when Mr.  
 (20) Hermann goes on to address the issue of directed (21) or contract research and he is referring to (22) special projects, I think his statement is (23) correct, that they have moved into a different (24) area.  
 (25) But the original statement is still true;

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(2) the SAB maintains a free rein in directing the (3) research program and awarding the money for (4) grants. It does not say for contracts or special (5) projects.  
 (6) Q What it says there "has complete and free rein in (7) directing the research program"--correct, it says (8) that?  
 (9) A Yes.  
 (10) Q And then it goes on to say "and awarding the (11) money for grants"; correct?  
 (12) A Correct.  
 (13) Q Now--  
 (14) A And they did that.  
 (15) Q Once they have directed or contract research in (16) the form of special projects--  
 (17) A That's not a grant.  
 (18) Q --they no longer have free rein in directing the (19) research program; correct?  
 (20) A That's not true. You're talking about the (21) scientific advisory board having free rein to (22) conduct the research program and award the (23) grants. That is very different from special (24) projects; that is not even a question.  
 (25) Q The special projects were also research programs

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(2) that resulted in publications in journals; is (3) that correct?  
 (4) A They have been research programs, but they (5) were special projects, not grants.  
 (6) Q The free rein that is promised in the frank (7) statement--  
 (8) A The scientific advisory board always had (9) free rein.  
 (10) Q --that is promised in the statement includes free (11) rein for all research projects?  
 (12) A No, sir, it does not say that.  
 (13) MR. MERRITT: Objection to the form.  
 (14) A I disagree violently. It has maintained (15) its independence and has free rein in directing (16) the research program and awarding the grants.  
 (17) That was true then and it's true now.  
 (18) Special projects are another matter and I (19) think Mr. Hermann was straining at gnats.  
 (20) Q So you think the CEO of American Brands, (21)

Incorporated on December 6, 1977 was straining at (22) gnats?

(23) A Yes.  
 (24) Q G-N-A-T-S?  
 (25) A Yes. He is comparing apples and oranges.

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(2) Clearly the special projects were not in the same (3) category.  
 (4) Q He goes on to say in the last paragraph on the (5) first page, in the second sentence, "As I (6) remarked at the September 1976 meeting, the (7) original concept of the TIRC did not embrace the (8) idea of contract research but envisioned industry (9) support of research on a pro bono publico, (10) arm's-length basis."  
 (11) Do you agree that he is correct here (12) concerning the original concept of the tobacco (13) industry research committee?  
 (14) A You're asking me to put myself back in 1954 (15) and interpret what somebody else was thinking and (16) I cannot do that.  
 (17) I don't think that the insignificant amount (18) of money awarded for special projects compromised (19) the main mission of TIRC or CTR in any way.  
 (20) Q When you say "insignificant amount," you do not (21) know how many millions of dollars that amount is; (22) do you?  
 (23) A I don't know, but it is not near the 300 (24) million that we spent on grants-in-aid.  
 (25) Q It is in the millions of dollars; isn't it,

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(2) Doctor?  
 (3) A I don't know that. I have not calculated (4) that.  
 (5) Q You do know that one person by himself, Dr. (6) Sterling, received more than a million dollars (7) for special projects himself?  
 (8) A Entirely possible over a period of years.  
 (9) Q You know that because you reviewed the file on (10) him?  
 (11) A Yes.  
 (12) Q He goes on--when I say "he" I mean in this (13) exhibit, Plaintiff's 8--Mr. Hermann goes on to (14) say "I believe the current movement toward (15) contract research is a violation of our (16) advertised pledges to the public."  
 (17) Do you agree with him?  
 (18) A I understand his point of view, but I think (19) he is putting too fine a point on it.  
 (20) Q He also goes on to say "I also believe that (21) industry support of objective and independent (22) scientific research is of cardinal importance in (23) maintaining a statesmanlike stance."  
 (24) Do you agree with that?  
 (25) A I agree with that, and we have done that.

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(2) Q He goes on to say "I do not think it would be (3) an (4) exaggeration to say that the current shift to (5) contract research bastardizes a fine concept of (6) objectivity which many good people in past years (7) worked long and hard to establish."  
 (8) Do you agree with that?  
 (9) A It's overstating the case.  
 (10) Q Moving to the third page, last paragraph, the (11) letter states in the third sentence, "It is (12) ironic that we decided some years ago to rename (13) TIRC the

Council for Tobacco Research because (13) tobacco industry research committee sounded too (14) much like industry-directed, as distinct from (15) independent, research. We think it is a pity (16) that the current CTR lacks the restraint and (17) discipline to live up to the newer name."

(18) Do you agree that by accepting funding for (19) special projects the CTR lacked the restraint and (20) discipline to live up to its name?

(21) A No.

(22) MR. HOAG: Off the record.

(23) (Whereupon, there was a discussion (24) off the record.)

(25) MR. HOAG: Let's mark this as

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(2) Plaintiff's Exhibit 9 for Identification, (3) please.

(4) (Whereupon, document was marked (5) as Plaintiff's Exhibit 9 for (6) Identification as of this date.)

(7) Q I will show you what has been marked as (8) Plaintiff's Exhibit 9, which is a letter with a (9) Council for Tobacco Research letterhead dated May (10) 11, 1978 to the Honorable John E. Moss from W.T.

(11) Hoyt.

(12) Have you ever seen this before?

(13) A I don't think so.

(14) Q The second page of the document--maybe this will (15) help refresh your recollection--is a letter dated (16) May 1, 1978 to Addison Yecaman, President of the (17) Council for Tobacco Research from John E. Moss, (18) Chairman, Subcommittee on Oversight and (19) Investigations.

(20) Have you ever seen that before?

(21) A No, sir.

(22) Q Do you know whether or not these are CTR (23) documents?

(24) A I don't know.

(25) Q You do not know whether they are in the CTR file

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(2) or not?

(3) A I would imagine so, because we certainly (4) kept all correspondence, of Mr. Hoyt's (5) correspondence.

(6) Q Who was that?

(7) A Executive vice president of the CTR. He (8) was effectively the chief operating officer.

(9) Q From when to when, if you know?

(10) A I don't know that. Mr. Hoyt died, oh, 12 (11) years ago, something like that.

(12) Q You do know that on May 11, 1978 Mr. Hoyt was the (13) executive officer for the Council for Tobacco (14) Research?

(15) A It says so on this letterhead.

(16) Q You are right, but do you know that is true?

(17) A I think that is right.

(18) Q Do you recognize his signature?

(19) A Yes, I have seen it several times.

(20) Q Is that his signature?

(21) A Yes, sir.

(22) Q In the second paragraph of that letter it says (23) "As we advised both the Commission and the Court, (24) the CTR does not engage in any marketing or (25) advertising activities, its main function being

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(2) the support of scientific research into tobacco (3) use and health."

(4) Do you agree with that statement?

(5) A Yes.

(6) Q Do you agree that news releases addressed to the (7) news media in general are a form of public (8) relations?

(9) A I suppose so. It's a matter of public (10) information.

(11) Our news releases generally cover the (12) amounts of monies awarded for research, (13) cumulative amounts that have been over the years, (14) additions to our scientific advisory board, (15) accomplishments of some of our grantees for (16) outstanding achievements, three of our grantees (17) who went on to win the Nobel Prize.

(18) Q Do you agree that news releases that state the (19) link between cigarette smoking and disease has (20) not been proven assist the cigarette companies in (21) selling cigarettes?

(22) MR. MERRITT: Objection to the form.

(23) A I am not a marketer and I don't know what (24) impact that would have.

(25) I think it clearly is beyond our expertise.

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(2) my expertise, to make any judgments about that.

(3) Q The tobacco industry funds the entire Council for (4) Tobacco Research operation; correct?

(5) A Correct.

(6) Q And part of that operation includes a public (7) relations section that puts out news releases; is (8) that correct?

(9) A No, sir. I write the news release.

(10) Q You write them?

(11) A Yes.

(12) Q You do now, but back before you worked there it (13) was somebody else, obviously.

(14) In 1978 do you know who wrote the news (15) releases?

(16) A No, sir.

(17) Q But that is part of the function of the CTR, to (18) put out news releases; correct?

(19) A No, sir. We do it once a year, coincident (20) with the publication of our annual report which (21) contains abstracts of all of the published (22) results of research that we have supported and we (23) do it as a matter of public information; every (24) institution does that.

(25) Q Those news releases have contained information

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(2) saying that the link between cigarette smoking (3) and lung cancer is not related?

(4) MR. MERRITT: A particular one?

(5) Q Are you aware of news releases put out by the CTR (6) that say the link between tobacco smoking and (7) disease has not been proven?

(8) A I am aware of that in the early days and (9) that was true.

(10) Q When you say "early days," Doctor, what do you (11) mean?

(12) A I mean the 1950's, 60's, up to the 70's.

(13) Q How about into the 1980's?

(14) A I can't tell you the day there was total (15) recognition that cigarettes were a risk factor (16) for health. There came a time when we all (17) evolved to this.

(18) MR. HOAG: Let's mark this as (19) Plaintiff's Exhibit 10 for Identification. (20) please.  
(21) (Whereupon, document was marked (22) as Plaintiff's Exhibit 10 for (23) Identification as of this date.)  
(24) MR. HOAG: Off the record for a (25) moment.

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(2) (Whereupon, there was a discussion (3) off the record.)  
(4) Q Defense counsel asked you to look at something.  
(5) What was that?  
(6) A 10, a memorandum from a Mr. Ernest Pepples (7) to Mr. C. I. McCarty.  
(8) Q Was there any particular part of the document he (9) wanted you to look at or--  
(10) MR. MERRITT: I gave it to him to save (11) us time.  
(12) MR. HOAG: I appreciate that.  
(13) Q That document, Doctor, have you ever seen that (14) before?  
(15) A I have not.  
(16) Q Do you know whether or not that is a CTR (17) document?  
(18) A I am sure it is not. I imagine this is one (19) of the documents stolen from the files of Brown & (20) Williamson, since it appears to be an internal (21) memorandum and a privileged one at that.  
(22) MR. MERRITT: Let me add for the (23) record that this is not our document and it (24) may not be our privilege, but to the extent (25) there is any applicable privilege we are in

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(2) the position to assert or waive, I want to (3) make it clear we wish to assert the (4) privilege and are not intending to waive (5) it.  
(6) I do not know what the rules are in (7) Engle.  
(8) MR. HOAG: It has been marked as an (9) exhibit in Broin.  
(10) MR. MERRITT: I am just making a (11) record.  
(12) MR. HOAG: It has been marked as an (13) exhibit in Broin and everyone is aware of (14) it, including Brown & Williamson.  
(15) Q With that said, Doctor, referring to the first (16) paragraph--before I get to that, do you know who (17) C.I. McCarty is?  
(18) A No.  
(19) Q Do you know who Ernest Pepples is?  
(20) A Yes.  
(21) Q And you have previously identified him; is that (22) correct?  
(23) A Yes, sir.  
(24) Q Back on September 29, 1978 what was Mr. Pepples' (25) position?

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(2) A I don't know.  
(3) Q Did he work for Brown & Williamson?  
(4) A I am sure he did, and because he refers to (5) that and I expect he had status as in-house (6) counsel for B&W which he represents, I don't know (7) what his official title was.  
(8) Q Did you know him?  
(9) A Not 20 years ago.  
(10) Q Do you know him now?  
(11) A I know him now.  
(12) Q Have you ever had occasion to discuss this (13) particular memo with him?

(14) A No. I did not know it existed until you (15) put it in my hands a few minutes ago.

(16) Q Has he mentioned any of the contents of this memo (17) to you?

(18) A No, sir.

(19) Q Where is Mr. Pepples now?

(20) A If he is home, tending to his business, (21) he's in Louisville, Kentucky in the Brown & (22) Williamson Tower on Fourth Street.

(23) Q What is his position?

(24) A Senior vice president or senior executive (25) vice president and general counsel and a very

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(2) nice man.

(3) Q In this document Mr. Pepples states, in the (4) second sentence, referring to "a statement by (5) Bill Shinn."

(6) Do you know who Bill Shinn is?

(7) A I think Mr. Shinn was a lawyer with (8) "Shockardy", a firm retained by some of the (9) tobacco companies.

(10) Q What makes you think that?

(11) A Because I have read documents where Mr. (12) Shinn's name has been prominent; I have seen (13) letters from him on the "Shockardy" letterhead.

(14) Q Are they CTR documents?

(15) A No. I have seen them because they were (16) introduced as plaintiff's exhibits. I have a (17) feeling they were stolen also.

(18) Q We can pull these up on the Internet; anybody (19) can.

(20) MR. MERRITT: I do not think he is (21) accusing you of stealing them.

(22) Q I want you to read that anyway.

(23) The second sentence of that first paragraph (24) says "Bill mentions two aspects of particular (25) value in CTR: One, the direct legal protection

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(2) derived from Brown & Williamson and two, the (3) political and public relations advantage accruing (4) to the industry."

(5) Do you agree that there is a political and (6) public relations advantage with the existence of (7) the CTR?

(8) A I would not have said that that way, but (9) the existence of the CTR demonstrates the (10) sensitivity of the industry in trying to support (11) research that will help to understand the (12) problems associated with smoking.

(13) Q Do you believe the industry also uses the CTR in (14) an effort to create a false controversy (15) concerning tobacco and disease?

(16) A No, sir. At no time have they ever (17) suggested that.

(18) Q Have they ever done anything to indicate to you a (19) desire to take the focus away from tobacco and (20) health and look at other areas, such as, for (21) example, humidity?

(22) A No, sir.

(23) Q The second paragraph of this letter, the last (24) sentence, discusses what the author refers to as (25) "the research dilemma presented to a responsible

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(2) manufacturer of cigarettes, which on the one hand (3) needs to know the state of the art and on the (4) other hand cannot afford the risk of having (5) in-house

work turned sour."

(6) Do you know what he is referring to when he (7) says "in-house work turned sour?"

(8) A No, sir.

(9) Q You have no idea what sour in-house work would (10) be?

(11) A I don't know what was in his mind at that (12) time 20 years ago.

(13) Q The next paragraph, he gives an example of (14) Liggett applying for a patent "that claims that a (15) catalyst added to tobacco blend reduces the (16) tumorigenicity of the total particular matter, (17) i.e., tar, when spread on the backs of rodents."

(18) Does that sentence help you to understand (19) what he means by "in-house work turned sour,"

(20) Doctor?

(21) A Well, as I read on, the rest of the (22) paragraph suggests that having work done, studies (23) done on the incidence of skin cancer which is not (24) applicable, it is a tacit admission that the (25) blend has carcinogenic effects, but the flaws in

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(2) that are enormous, as the rest of the paragraph (3) elaborates.

(4) Q But he is saying he wants to make sure the CTR (5) can be used to do that kind of research for them, (6) so they do not have this research in their own (7) records; correct?

(8) MR. MERRITT: Objection to the form.

(9) A You're asking me to say what he was (10) thinking, what Mr. Pepples was thinking. I (11) cannot say that.

(12) Q Reading the next paragraph, the fourth one, it (13) says "The point here is the value of having the (14) CTR doing work in nondirected and independent (15) fashion as contrasted with work either in-house (16) or under B&W contract which, if it goes wrong, (17) can become the smoking pistol in a lawsuit."

(18) Does that indicate to you that Mr. Pepples (19) was concerned about in-house research being used (20) in litigation against the tobacco companies, (21) Doctor?

(22) A That is what it suggests to me.

(23) Q Does it also indicate to you he would prefer to (24) have the CTR do that kind of research for the (25) benefit of the tobacco companies?

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(2) A Not the CTR, but the CTR sponsored (3) grantees, not saying anything adverse to the (4) elaboration of truth and good since he is simply (5) saying if this is to be discovered, it probably (6) is best it be done under an independent contract.

(7) MR. HOAG: Let's mark this as (8) Plaintiff's Exhibit 11 for Identification, (9) please.

(10) (Whereupon, document was marked (11) as Plaintiff's Exhibit 11 for (12) Identification as of this date.)

(13) Q I am showing you a document marked as Plaintiff's (14) Exhibit 11, which is a news release.

(15) At the top it says "Leonard Zahn and (16) Associates, Incorporated, for the Council for (17) Tobacco Research, For Release Friday July 6, (18) 1979."

(19) The document goes on to state "Tobacco (20) research group says continued research needed to (21) find the causes of cancer and other major (22) diseases."

(23) Have you ever seen this document before, (24) Doctor?

(25) A I don't think I have seen this one.

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(2) Q Is this a Council for Tobacco Research document, (3) to your knowledge?

(4) A It is a document from Leonard Zahn, who is (5) a public relations consultant employed by the CTR (6) for the purpose of generating their press (7) releases.

(8) Q Is Leonard Zahn and Associates still employed by (9) the CTR for that purpose?

(10) A No.

(11) Q On July 6, 1979 Leonard Zahn and Associates was (12) at that time employed by the CTR, Doctor; is that (13) correct?

(14) A That is what the document states.

(15) Q Do you know that?

(16) A I accept that because Leonard Zahn was a (17) public relations consultant to the CTR for a (18) number of years and his name is on this press (19) release.

(20) Q Do you have personal knowledge that Leonard Zahn (21) was in fact a CTR consultant--

(22) A Yes.

(23) Q --for a number of years which included 1979?

(24) A Apparently, yes. I was not there, I cannot (25) vouch for that, but I think it is perfectly

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(2) reasonable to make that assumption.

(3) Q Was Leonard Zahn and Associates employed by CTR (4) at any time when you worked for the CTR?

(5) A When I first was there, yes.

(6) Q How long after you worked for the CTR did Leonard (7) Zahn and Associates no longer have an involvement (8) with the CTR?

(9) A I think five years ago.

(10) Q About five years ago?

(11) A Yes.

(12) Q 1992?

(13) A That would be about right.

(14) Q Why was that association discontinued?

(15) A Mr. Zahn is in his 70's and he retired.

(16) Q Did the CTR replace him with another public (17) relations firm?

(18) A No.

(19) Q Did the CTR replace him with any kind of a firm (20) to assist in public relations or news release (21) developments?

(22) A No.

(23) Q The first paragraph of this release says "Marking (24) the completion of its first quarter-century, the (25) Council for Tobacco Research said today it exists

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(2) because continuing support is needed to help (3) science find the causes of cancer, heart disease (4) and chronic pulmonary ailments."

(5) As far as you know is that still true (6) today?

(7) A I think that's entirely true.

(8) Q It goes on to say in the third paragraph that (9) "These are major age-related constitutional (10) disorders that have been associated statistically (11) with smoking, but such associations are not proof (12) of cause and effect, the report said."

(13) As we sit here today do you agree with that (14) statement, that such associations are not proof (15) of cause and effect?

(16) A In the scientific sense, that's correct.

(17) In the lay sense I would accept that the (18) Surgeon General's statement is appropriate.

(19) Q To your knowledge the CTR has never published

2 (20) news release that contradicts paragraph three of (21) this document; correct?  
 (22) A I don't think it's necessary, no. I have (23) never published contradictory statements.  
 (24) MR. HOAG: Let's mark this as (25) Plaintiff's Exhibit 12 for Identification.

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(2) please.  
 (3) (Whereupon, document was marked (4) as Plaintiff's Exhibit 12 for (5) Identification as of this date.)  
 (6) Q Have you ever seen Plaintiff's Exhibit 12 before,  
 (7) sir?  
 (8) A I don't think so, but I probably did.  
 (9) Q Plaintiff's Exhibit 12 is an Associated Press (10) article.  
 (11) At the top it says "To Leonard Zahn, From (12) Jada Smith, FYI," and then it has a copy of the (13) AP article.  
 (14) Who is Jada Smith, if you know?  
 (15) A I don't know.  
 (16) Q But you do know who Leonard Zahn is?  
 (17) A Yes.  
 (18) Q And back in 1991 when this article was printed,  
 (19) or at least that is the date the article was (20) referring to. Leonard Zahn was employed as a (21) public relations consultant for the CTR; is that (22) correct?  
 (23) A Yes.  
 (24) Q Are you familiar with the contents of this (25) article?

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(2) A Well, to some extent.  
 (3) I know Michael Cummings is a research (4) associate at Roswell Park in Buffalo. He did (5) serve a group of the CTR grantees and wrote a (6) paper of the results.  
 (7) Unfortunately this is reproduced so badly I (8) am not sure I am getting the gist of everything.  
 (9) Q Referring to the third paragraph, and I will read (10) that out loud and you will be able to read it too,  
 (11) I hope. I agree it may not be as clear as one (12) would like, it says "The survey results published (13) in the latest issue of the American Journal of (14) Public Health show that 94 percent of the (15) industry-financed researchers agreed that even (16) secondhand smoke is harmful to nonsmokers and 91 (17) percent agreed that most lung cancer deaths are (18) caused by smoking."  
 (19) Do you recall that as being a part of the (20) research results that Dr. Cummings did?  
 (21) A I would not dignify what Cummings did as (22) research. He did a mail survey and a telephone (23) survey; that is not research. That is (24) establishing a basis for your business.  
 (25) He got a response from only 77 of the 166

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(2) investigators he queried. That is a response (3) rate of only about less than 40 percent.  
 (4) Furthermore, I think that anybody would (5) respond to the survey that he published in the (6) way that they did.  
 (7) Even secondhand smoke may be harmful and (8) most of the people who die of lung cancer have (9) been smokers, so where is the news?  
 (10) Q This says that even secondhand smoke is harmful,

(11) not may be. This article says that "94 percent (12) of industry-financed researchers agreed that even (13) secondhand smoke is harmful to nonsmokers,"  
 (14) Doctor.  
 (15) A I know what it says and this is not well (16) established. I know what the literature says.  
 (17) Q Then you do not agree that 94 percent of the (18) industry-financed researchers agreed that even (19) secondhand smoke is harmful to nonsmokers, (20) Doctor?  
 (21) A I believe that 94 percent of the people (22) that responded to his survey agreed that even (23) secondhand smoke is harmful, but I don't know the (24) degree to which it's harmful and I don't know the (25) quantification of that and I do not know that

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(2) there are other studies that support that and (3) there are lots of air pollution studies that (4) refute that.  
 (5) I think that all of the votes are not on (6) that. I am not defending smoking; I am telling (7) you what the science is.  
 (8) Q It also goes on to say that 91 percent of those (9) surveyed agreed that most lung cancer deaths are (10) caused by smoking.  
 (11) A Well, if you--  
 (12) MR. MERRITT: Wait. Let him ask the (13) question.  
 (14) Q Do you agree with that?  
 (15) A Depends on how you use the word "cause."  
 (16) Q So your answer is the same as it has always been (17) related to the word "cause"?  
 (18) A Absolutely.  
 (19) MR. HOAG: Mark this, please, as (20) Plaintiff's Exhibit 13 for Identification.  
 (21) (Whereupon, document was marked (22) as Plaintiff's Exhibit 13 for (23) Identification as of this date.)  
 (24) A I don't know why you asked to take my (25) deposition if you had this letter, because this

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(2) says it all.  
 (3) Q Okay.  
 (4) This is Exhibit 13, Plaintiff's Exhibit 13, (5) a letter dated February 15, 1995 to Dr. Todd from (6) you; correct?  
 (7) A Yes.  
 (8) Q And you are the author of this letter?  
 (9) A I am.  
 (10) Q This is a CTR document?  
 (11) A Correct.  
 (12) Q It remains in the CTR files?  
 (13) A Yes, sir, and engraved in our hearts.  
 (14) Q And referring to the third page of that document, (15) in the second sentence, third paragraph, you (16) state "as indicated previously, much of the (17) research which we have funded does not focus on (18) tobacco and health, but rather attempts to (19) elucidate basic disease processes."  
 (20) Is that a correct reiteration of your (21) belief concerning the CTR research?  
 (22) A I think it does, as we previously (23) discussed.  
 (24) Q Referring to the top of that third paragraph on (25) page three, you write the following, and this is

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(2) in quotes from you and you are specifically (3) referring to what Dr. Todd has stated when you (4)

say "You state that a survey of industry-funded (5) scientists revealed that nearly 80 percent of (6) them indicated that none of their research ever (7) examined the health effects of tobacco use."

(8) I realize that this statement is (9) reiterating what the doctor said, but do you (10) agree that the survey research conducted by Dr.

(11) Cummings found that 80 percent of those people (12) surveyed indicated that none of the research (13) examined the health effects of tobacco use, (14) Doctor?

(15) A That is what Dr. Cummings said and it was (16) repeated in Dr. Todd's letter, which was not (17) written by Dr. Todd but by a lawyer from the (18) American Cancer Society.

(19) 80 percent of 77 people who responded out (20) of more than 1,000 investigators indicated that (21) their research did not examine the direct health (22) effects of tobacco use; that is correct.

(23) Because we have gone to fundamental (24) biomedical research as explained in the earlier (25) part of the letter and explained here this

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(2) morning.

(3) Q So it is correct for the most part that the CTR (4) knew funds did not examine the health effects of (5) tobacco use?

(6) MR. MERRITT: Objection to the form.

(7) A In the sense we do not expose animals to (8) cigarette smoke any longer, we do not paint tar (9) on the backs of rats, all of that is passe and (10) old hat and nonproductive and unrewarding.

(11) What we are looking at is fundamental cell (12) regulation, what makes it behave normally or (13) abnormally. When we know the answer to those (14) questions we can get to clinical application.

(15) But I agree that 80 percent of them are not (16) dealing with tobacco or tobacco products or (17) smoke, but rather with test-tube research into (18) genetics, immunology, fundamental questions of (19) molecular and cellular biology.

(20) MR. HOAG: Off the record for a (21) moment, please.

(22) (Whereupon, there was a discussion (23) off the record.)

(24) MR. HOAG: I do not think I have any (25) other questions.

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(2) It is 5:39, so you have time to make (3) your taxi at 5:40 P.M. and I appreciate (4) your time, sir.

(5) Thank you.

(6) THE WITNESS: Okay.

(7) \*

" (10) \_\_\_\_\_ (11) JAMES F. GLENN

(14) \_\_\_\_\_ (15) Sworn to before me

(16) this \_\_\_\_\_ day of (17) \_\_\_\_\_, 1997.

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FOR

Exhibit No.

IDENTIFICATION

12

Abstract

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QUESTIONS CERTIFIED: Page 57 Line

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Shorthand Reporter

8

for the State of New

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the Witness

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## I N D E X

## EXAMINATION BY

Mr. Hoag

## E X H I B I T S

-

Tobacco Industry

Statement of Policy

List of Publications

C.C. Little Report

Hockett Report

Article

Letter

Letter

Letter

Memorandum

Release

Memorandum

Letter

hereinbefore set forth, was

12 duly sworn by me and that such

deposition is a

13 true record of the testimony

given by the

14 Witness.

15 I further certify

that I am not

16 related to any of the parties

to this action by

17 blood or marriage, and that I

am in no way

18 interested in the outcome of

this matter.

19 IN WITNESS WHEREOF,

I have hereunto

20 set my hand this \_\_\_\_ day of

\_\_\_\_, 1997.

21

22

23

24

PHYLLIS SAX

25

## C E R T I F I C

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, PHYLLIS SAX, a

Shorthand Reporter

and Notary Public within and

for the State of New

York, do hereby certify:

That JAMES F. GLENN,

the Witness

whose deposition is